

NOV 12 1996

In The
Supreme Court of the United States CLERK

October Term, 1996

GUY E. ADAMS, et al.,

Petitioners,

v.

CHARLIE FRANK ROBERTSON and LIBERTY
NATIONAL LIFE INSURANCE COMPANY,

Respondents.

On Writ Of Certiorari To The
Supreme Court Of Alabama

JOINT APPENDIX
VOLUME I, PAGES 1-245

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Petition For Certiorari Filed May 16, 1996
Certiorari Granted October 1, 1996

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**RELEVANT DOCKET ENTRIES
CIVIL CASE ACTION SUMMARY**

State of Alabama
Unified Judicial System

Case Number
CV-92-021

IN THE CIRCUIT COURT
OF BARBOUR COUNTY

Service Date 5-13-92

Plaintiff(s)	Defendant(s)
Charlie Frank Robertson	Liberty National Life
Case Number	Insurance Company
CV-92-021	Judge's Name
<u>X</u> Jury	Robertson
Date filed	Case Type
5-12-93	Fraud
Attorney(s) for Plaintiff(s)	Attorney(s) for
Jere L. Beasley	Defendant(s)
Tom Methvin	Horace Williams
	Donald M. James

Garnishments

Intervenors Attorneys

1. W. Boyd Reeves
Norman E. Waldrop Jr.
M. Kathleen Miller
2. William C. Roedder Jr.
W. Alexander Mosely
3. John D. Richardson
David F. Daniell
4. Russell Irby
Coale, Helmsing, Lyons,
Sims & Leach

DATE	ACTIONS, JUDGMENTS, CASE NOTES
5-12-92	S&C filed.
5-13-92	LNLIC served by registered mail.
6-12-92	Motion to Dismiss and/or in the Alternative to Transfer filed.
6-19-92	Plaintiff's 2nd Request for Production to LNLIC.
7-7-92	Motions to Dismiss/Transfer set for September 14, 1992 9AM Clayton
8-12-92	Plaintiff's 3rd Request for Production to LNLIC.
8-18-92	LNLIC Response to Plaintiff's 2nd Request for Production.
8-18-92	LNLIC Response to Plaintiff's 1st set of Interrogatories and Request for Production.
8-24-92	Motion to compel answers to LNLIC/Motion to Compel response to Request for Prod.
8-27-92	All pending motions set for September 14, 1992.
9-14-92	Motion to compel by plaintiffs granted. Motion to transfer venue denied.
9-24-92	Order on Motion to Compel, Requests for Production #3 and #29, Interrogatory #25 and 3rd request for production. Other parts to Order about contacting policyholders etc.
9-30-92	Plaintiff's 4th request for production to LNLIC.
10-1-92	Hearing set for class certification and other pending motions for October 16th, 1992 at 10AM/Clayton.
10-2-92	Motion for Order Certifying Class Action and Brief in Support thereof.

10-2-92	Plaintiff's 1st amendment to complaint.
10-8-92	Plaintiff's 5th request for production to LNLIC.
10-14-92	Motion for more definite statement, Motion to Dismiss Plaintiff's 1st amendment to complaint and Motion to transfer by defendant. Defendant's response to motion for order certifying class action and request for additional time.
10-16-92	Brief in support of the October 14, 1992 motions by defendant.
10-16-92	Affidavits of Charlie Tobertson, Robert I. Stewart and John W. Miller.
10-16-92	To hear motions in Union Springs on October 29, 1992.
12-14-92	Order setting SC for January 4, 1993 at 9AM, Clayton.
1-4-93	Jury portion of trial continued until Fall Term, 1993.
1-13-93	Order setting non-jury issue for trial on March 8, 1993.
1-20-93	Motion to withdraw as counsel for Plaintiff filed by Whigham. Motion granted March 8, 1993.
1-29-93	Order setting hearing on certification for March 8, 1993.
2-5-93	LNLIC 1st request for production, requests for admissions, interrogatories, request for production and 1st interrogatories to Plaintiff.
2-22-93	Order on Motion to Compel etc.
3-4-93	Plaintiff's answers to defendant's request for admissions, interrogatories and request for production.

- 3-8-93 Class action settled. Attorneys to prepare order.
- 3-10-93 Order certifying class. Order dismissing Counts one and two of the Plaintiff's Complaint.
- 3-24-93 Plaintiff's 2nd interrogatories to LNLIC/ Motion to Compel response to Plaintiff's request for production.
- ?-?-93 Order setting all pending motions for May 5, 1993.
- 4-30-93 Motion for leave to intervene and Motion to amend order certifying class filed by W. Boyd Reeves, Norman E. Waldrop Jr. and M. Kathleen Miller.
- 5-5-93 All pending motions continued. Attorneys to contact Circuit Judge for date.
- 6-14-93 Motion for Leave to Intervene and Intervention Petition filed by William C. Roedder Jr. and W. Alexander Mosely.
- 6-16-93 Plaintiff's 2nd amendment to Complaint.
- 6-16-93 Stipulation and Agreement of Compromise and Settlement with exhibits A,B,B-1,C,D and E,
- 6-16-93 Order on Motion to Intervene. A hearing on Intervenor's petition is hereby set for July 27, 1993 at 9AM in Clayton.
- 6-16-93 Order with Respect to Proposed Settlement. A hearing to be held October 20, 1993 at 9AM at the courthouse in Clayton.
- 6-24-93 Joint Petition for Instructions to certain class members and to Liberty National concerning prosecution of separate action by certain class members. (By Plaintiff).

- 6-24-93 Order setting joint petition for instructions for June 28, 1993 (9AM), Clayton.
- 6-24-93 Deposition notice under rules 30(b)(6) and 30(b)(5)
- 6-24-93 Two (2) Intervenor's interrogatories and requests for production of documents to the Plaintiff. (One has 27 pages and one has 28 pages)
- 6-24-93 Motion if Intervenor's for leave to file in excess of 40 interrogatories under rule 33, ARCP. (Faxed to Court) Motion for Order Shortening Time for Response.
- 6-25-93 Order on Discovery by Intervenor's.
- 6-26-93 Motion for relief from and/or clarification of order with respect to proposed settlement by intervenors. Motion to amend intervention petition.
- 6-28-93 Liberty National's withdrawal and disavowal of all participation in joint petition for instructions as required by orders issued by The Circuit Court of Mobile County, Alabama on June 25, 1993.
- 7-2-93 Petition to Intervene (John D. Richardson & David F. Daniell, Attorneys) Motion to Strike and/or Motion to Dismiss or Withdraw Previous Orders.
- 7-6-93 Motion to Strike and/or Motion to Dismiss or withdraw previous orders denied.
- 7-6-93 Response of LNLIC to Petition for Intervention by Richard Hoss et al. LNLIC Opposition to Motion of Richard Hoss et al to Strike and/or Dismiss or Withdraw previous orders and for further relief.

- 7-6-93 Joint Motion of LNLIC, named Plaintiff and Class Counsel to Substitute Corrected Exhibits to Stipulation.
- 7-6-93 Order granting Joint Motion of LNLIC, Named Plaintiff and Class Counsel to substitute Corrected Exhibits to Stipulation.
- 7-6-93 Order on Intervention by Richard Hoss et al. Intervention granted.
- 7-6-93 Two (2) Briefs by Intervenor. Three (3) Indexes of Exhibits in Support Thereof.
- 7-7-93 Objection to Class Certification and Settlement Proposal, Motion for Leave to Intervene to File Individual Action or Opt Out of Class Action in Barbour County, and In the Alternative, Motion for Leave to Intervene as Class Representative. . . . Motion for Permission to Conduct Discovery. . . . Cmplaint [sic] In Intervention.
- 7-9-93 Order on Intervention.
- 7-13-93 LNLIC consolidated opposition to Intervenor's requests for leave to conduct discovery.
- 7-13-93 Plts. brief in opposition to Intervenor's request to conduct discovery.
- 7/16/93 Intervenor's Motion for Extension of Time to Comply with July 6, 1993 Order of the Court.
- 7/21/93 Brief in Support of Intervenor's Objections to Rule 23 (B)(2) Class Certification without a Right to Opt Out and the Proposed Settlement with 5 affidavits.
- 7/21/93 LNLIC Motion to Consolidate Hearings on All Motions and Requests for Relief by Intervenor with October 20, 1993 Fairness Hearing.
- 7/23/93 Intervenor's Motion for Extension of Time filed July 16, 1993 denied.

- 7/26/93 Motion to Join In Brief In Support of Intervenor's Request to Conduct Discovery.
- 7/26/93 Intervenor's Reply to Briefs in Opposition to Request for Leave to Conduct Discovery.
- 7/27/93 Intervenor's Brief in Support of Opting Out of the Rule 23 (b)(2) Class or in the Alternative, For Leave to Conduct Discovery.
- 7/27/93 In Clayton . . . Open Court. Some Discovery allowed. Fairness Hearing re-scheduled for November 4, 1993 at 9AM at Clayton.
- 8/2/93 Motion for Substitution of New Fairness Hearing Date in Documents to be mailed to Class Members, For Designation of Address for Special Master, For Correction of Typographical Error in June 16, 1993 Order with Respect to Proposed Settlement, and for Correction of Inadvertent Omission in Stipulation Prior to Mailing of Class Action Notice and Attachments. Court's Formal Order Entered.
- 8/3/93 Notice of Intent to Mail Class Action Notice and to Publish Summary Notice and Motion for Approval of Printed Notice, Summary Notice and Their Distribution and Publication. Court's Formal Order Entered.
- 8/4/93 Objection to Class Notice by Intervenor.
- 8/6/93 Motion to Dismiss by LNLIC & Motion to Dismiss by Torchmark Corp. These two (2) motions were filed under CV-92-021 but styled Willard P. Prince et al vs LNLIC et al.
- 8/9/93 Motion for Hearing on Propriety of Proposed Notice of Class Action and Objections to Notice filed by Intervenor.
- 8/13/93 Motion for Reconsideration of August 3, 1993 Order Approving Printed Notice, Summary

- Notice and Their Distribution and Publication filed by Intervenor.
- 8/16/93 Hon. Walter Calton appointed as Special Master.
- 8/17/93 Motion for Emergency Relief From Order by Havards. Affidavit of Dr. Michael W. Meshad.
- 8/18/93 Petition for Intervention Donald F. Allen et al.
- 8/19/93 Intervenor's request for oral argument on Motion for Reconsideration of August 3, 1993 Order Approving Printed Notice, Summary Notice and their distribution and publication.
- 8/20/93 Amended Motion for Reconsideration of August 3, 1993 Order Approving Printed Notice, Summary Notice and their Distribution and Publication.
- 8/20/93 Motion for Leave to Intervene by Joseph R. and Brenda L. Havard.
- 8/20/93 Stipulation.
- 8/20/93 Order Granting Complaint in Intervention.
- 8/20/93 Complaint in Intervention.
- 8/20/93 Motion to Appoint Process Server Filed & Granted.
- 8/20/93 Notice of Video Deposition of Brenda L. Havard.
- 8/20/93 Complaint in Intervention served on Craig J. Hurst, LNLIC and Torchmark.
- 8/24/93 Notice of Ethel M. Offord of Intention to appear & appearance.
- 8/27/93 Objection to Class Action by Donald W. Gabel (Attorney: J. Langford Floyd)

- 8/31/93 Motion for Exclusion from Class Action Pursuant to Alabama Rule of Civil Procedure 23 and/or Objection to Class Action Determination, Settlement and Settlement Hearing. Clarece Davis, Edith M. Boudan, Betty Napier Stacey, Sylvia L. Glisson, James B. Glisson, Terry A. Alday, Brenda York Cooper, Tony R. Davis, Helen B. Eslava, Robert L. Alday III, Edith F. Boudan, Steven D. Cooner and Billy H. Cooner. (Attorney) R. Jeffrey Perloff
- 9/01/93 Decent from Class Action Settlement by Velma Sanders Shuford and Robie S. White. (Attorney Bruce Boynton)
- 9/02/93 Objection to Class Action by Sandra G. Fuqua. (Attorney J. Langford Floyd)
- 9/02/93 Notice of Opting Out of Purported Class by James E. Haynes and Family and David R. Short and Family. (Attorney Garve W. Ivey Jr.)
- 9/02/93 Objections to Protective Order Proposed by LNLIC and Motion to Enter Alternative Confidentiality Order by Intervenor. (Attorney William C. Roedder)
- 9/07/93 Gary A. Brunson's Motion for Exclusion from Class Action Pursuant to Alabama Rule of Civil Procedure 23 and/or Objection to Class Action Determination, Settlement and Settlement Hearing. Same for Tony R. Davis. (Attorney is R. Jeffrey Perloff)
- 09/08/93 Intervenor's Motion to Continue November 4, 1993 Hearing.
- 09/09/93 Protective Order to Govern Disclosure.
- 9-15-93 Motion to Postpone The Deadlines Contained in the Court's Notice of Pendency of Action, Class Action Determination, Settlement, and Settlement Hearing; or in the Alternative, to

Alter Dates for the Proof of Distribution and Briefs and Other Documents to be Submitted in Support of the Settlement and Award of Attorney's Fees; or in the Alternative to Continue the November 4, 1993 Hearing. Filed by all Intervenor.

- 9-16-93 Motion to Set Pending Motions for Hearing by Several Intervenor.
- 9-16-93 Letter from William C. Roedder, Jr. to James A. Main dated September 13, 1993. Asked by Roedder to be filed as part of the record.
- 9/17/93 Notice That Certain Class Action Plaintiffs are not Included in the Class. (H. Darden Williams, Attorney)
- 9/20/93 Marie K. Peevy's Motion for Exclusion from Class Action Pursuant to Alabama Rule of Civil Procedure 23 and/or Objection to Class Action Determination, Settlement and Settlement Hearing. (R. Jeffrey Perloff)
- 9/20/93 Petition for Intervention by Ashton B. Cannon et al. (Richardson & Daniell)
- 9/23/93 Plaintiff's Request for Production to Defendant LNLIC (Several Authorization for Information)
- 9/27/93 Motion for Order Shortening Time for Responses to Request for Production by Intervenor.
- 9/27/93 Entry of Appearance and Objection to Proposed Settlement by many people. (Attorney: Stephen M. Gudac)
- 9/28/93 Five Separate Sets of Interrogatories to Intervenor by Plaintiff. Motion for Order Shortening Time Denied. Motion to continue 11/04/93 Hearing Denied.

- 9/30/93 Notice of Intent to Appear at Settlement Hearing, Objections of Rubye and Alfred Posey. (Attorney, Robert E. Richardson.)
- 10/05/93 LNLIC Objection to Intervenor's Motion to Shorten Time for Response to Request for Production Served by Intervenor in Violation of This Court's Previous Orders.
- 10/05/93 Notice of Intention to Appear and Objection to Inclusion as a Member of the Class filed pro-se by Talmadge M. Allen.
- 10/06/93 Reservation of Rights filed by Winona H. Turk Attorney is Melissa A. Posey.
- 10/06/93 Jackie C. Robertson declines to participate as a Class Member.
- 10/06/93 Geraldine Pinkston and Robert J. Gross decline to participate.
- 10/07/93 Notice of Appearance by Norman J. Gale Jr. for eight (8) clients. Objections.
- 10/08/93 Objection to Class Certification, Class Notice, Denial of Discovery, Issuance of Injunction and Class Settlement and Alternative Request to Opt Out by Hon. Lowry M. Lomax.
- 10/08/93 Brief in Support of Motion for Exclusion from Class Action Pursuant to Alabama Rule of Civil Procedure 23 and/or Objection to Class Action Determination, Settlement Hearing and Settlement. Notice of Intention to Appear and Petition [sic] to Intervene. (R. Jeffrey Perloff)
- 10/08/93 Petition to Intervene, Objection to Class Certification, Class Notice, Denial of Discovery, Issuance of Injunction and Class Settlement and Alternative Request to Opt Out of Class and Notice of Intention to Appear. (Attorney: Joseph J. Boswell and Sidney W. Jackson, III)

- 10/08/93 Objection to Class Certification, Class Notice, Denial of Discovery, issuance of Injunction and Class Settlement and Alternative Request to Opt Out of Class. (Attorney: John D. Richardson & David F. Daniell)
- 10/08/93 Petition to Intervene, Notice of Intention to Appear, and Objection to Class Certification, Class Notice, Denial of Discovery, Issuance of Injunction and Class Settlement and Alternative Request to Opt Out of Class (15). Attorney: William M. Lyon Jr.
- 10/08/93 Objection and Motion for Leave to Opt Out of Class Action and Motion for Leave to Intervene Under Rule 24(a). Attorneys: Grey Redditt Jr. and Lisa Bradford Hansen.
- 10/08/93 Notice of Intention to Appear, Objections and Filing of Documents and Papers. 3 large boxes and 1 smaller box of paperwork. Attorney: William Roedder Jr.
- 10/09/93 Notice of Intention to Appear, Objection to Mr. Robertson as a Representative of the Class as Defined, Claim for Relief by Attorney Slade Watson.
- 10/08/93 Statement of Intention to Appear at Settlement Hearing, Objection to Class certification, Class Notice, Denial of Discovery, Issuance of Injunction and Class Settlement. And Alternative Request to Opt Out of Class. (18) Clients Attorney: Ronald O. Gaiser Jr.
- 10/08/93 Objection to Class Certification, Class Notice, Denial of Discovery, Issuance of Injunction and Class Settlement, and Alternative Request to Opt Out of Class. (6) Clients ATTORNEY: James Bodiford

- 10/08/93 Notice of Intention to Appear and Objection to Terms and Conditions of the Class Action Settlement: (55) Clients/Families Attorney: Gregory B. Breedlove
- 10/08/93 Objection to Class Certification, Class Notice, Denial of Discovery, Issuance of Injunction and Class Settlement and Alternative Request to Opt Out of Class. (6) Clients Attorney: James E. Atchison & Mona A. Vivar
- 10/08/93 Objection filed Pro-Se by Guy R. Jackson Sr. and Thelma S. Jackson
- 10/08/93 Notice of Intention to Specially Appear, Objection to Proposed Class Action and Motion to Opt Out of Class Action for several clients. Attorney: Robert A. Hannah (Florida)
- 10/08/93 William J. Pierce's Motion for Exclusion from Class Action Pursuant to Alabama Rule of Civil Procedure 23 and/or Objection to Class Action Determination, Settlement and Settlement Hearing. Attorney: R. Jeff Perloff
- 10/13/93 Petition to Intervene and Notice of Intention to Appear Attorney: Thomas J. Glidewell (4) Clients
- 10/12/93 Objection to Class Action Determination and Proposed Settlement. Attorney: J. Gusty Yearout
- 10/12/93 Objection to Class Action Determination and Proposed Settlement. Attorney: M. Clay Ragsdale
- 10/12/93 Motion to Opt Out or in the Alternative Objection to Class Certification and or The Proposed Settlement (2 Motions) Attorneys: Finnbohner & Chiepalich
- 10/12/93 Appearance by Additional Group A6 Class Members. Attorney: J. Cecil Gardner

- 10/12/93 (4) Objection to Class Certification, Class Notice, Denial of Discovery, Issuance of Injunction and Class Settlement, and Alternative Request to Opt Out of Class. Attorney: Thomas J. Glidewell
- 10/12/93 Notice of Intention to Appear, Petition to Intervene and Objection to Class Certification, Class Notice, Denial of Discovery, Issuance of Injunction and Class Settlement, and Alternative Request to Opt Out of Class. Attorney: Sidney W. Jackson III.
- 10/12/93 Request to be Excluded from Class of Plaintiffs and Objection to Terms of the Class Settlement. (2) Motion to Enforce Previous Order and Objection to Terms of Class Settlement. Attorney: Thomas P. Willingham
- 10/12/93 Objection to Class Certification, Class Notice, Denial of Discovery, Issuance of Injunction and Class Settlement and Alternative Request to Opt Out of Class. Attorneys: Lynn C. Miller & Mary Beth Mantiply
- 10/14/93 Objection to Class Certification, Class Notice, Denial of Discovery, Issuance of Injunction and Class Settlement and Alternative Request to Opt out of Class Attorney: Richard L. Thiry
- 10/14/93 Objection to be Included in Action filed Pro-Se by Norma S. Gordon and Kelly Gordon-Hooper.
- 10/14/93 Motion for More Definite Statement, Motion to Dismiss Plts 1st Amendment to Complaint and Motion to Transfer by LNLIC.
- 10/14/93 Copy of Letter dated September 3, 1993 from Attorney E. Dale Dewberry to Jere Beasley and James Gewin concerning Perry C. Buie.

- 10/18/93 Petition to Intervene. Attorney: John D. Richardson and David F. Daniell.
- 10/18/93 Order on Mandamus from Supreme Court concerning #1921852 and 1930001.
- 10/19/93 Answer of Respondent William H. Robertson, Circuit Judge of Barbour County on Order of Mandamus from Supreme Court.
- 10/20/93 Louie B. Spear and Joye Spear's Objection to Class Certification, Class Notice, Denial of Discovery, Issuance of Injunction and Class Settlement and Alternative Request to Opt Out of Class. Attorney: Richardson & Daniell.
- 10/25/93 Notice of Appearance by Stephen M. Gudac for more Plaintiffs.
- 10/25/93 Pro-se, Decline to Participate by Anna Allen.
- 10/25/93 Motion to Opt Out or in the Alternative, Objection to Class Certification and or The Proposed Settlement. (Attorney: Steve Olen)
- 10/27/93 Intervenors' Response to Class Counsel's Interrogatories and Requests for Production of Documents. (Attorney: Stephen R. Copeland)
- 10/27/93 Objections to Discovery (Attorney: Roedder)
- 10/27/93 Motion to Opt out or in the Alternative, Objection to Class Certification and or The Proposed Settlement. (Attorney: Finkbohner & Chiepalich)
- 10/28/93 Motion to Intervene (Attorney: Ronald O. Gaiser Jr.)
- 10/28/93 Response to Class Counsel's Interrogatories and Requests for Production. (Attorney: Stephen R. Windom)
- 10/28/93 Objection to Class Certification, Class Notice, Denial of Discovery, Issuance of Injunction and

Class Settlement and Alternative Request to Opt out of Class. (Attorney: William M. Lyon Jr.) (5)

- 10/28/93 Motion to Permit The Filing of Certain Objections (Attorney: Lyon)
- 10/28/93 Petition to Intervene (Attorney: Lyon)
- 10/29/93 Proof of Distribution of Printed Notice and Summary Judgment (Attorney: Gewin)
- 11/02/93 Order of Barbour Circuit Court. Case to be held November 18, 1993 at 8AM at the Courthouse in Eufaula.
- 11/01/93 Response of Intervenors to Class Counsels Interrogatories and Request for Production of Documents. (John D. Richardson.)
- 11/01/93 Motion to Opt Out or in the Alternative Objection to Class Certification and or the proposed settlement. (Steve Olen)
- 11/02/93 Motion to Postpone or Continue the deadline contained in the Court's Order with respect to proposed settlement establishing a deadline for Briefs or other documents in support of the settlement and [sic] in support of request for award of Attorney's fees and expenses. (James A. Main)
- 11/03/93 Supreme Court of Alabama (Ruling on Mandamus)
- 11/03/93 Motion to Opt out or in the alternative objection to class certification and or the proposed settlement. (Steve Olen)
- 11/04/93 Objection to Inclusion in Class. (Bob Sherling)
- 11/04/93 Opposition to Motion to postpone or continue the deadline contained in the courts order with respect to proposed settlement establishing a

deadline for briefs or other documents in support of the settlement and in support of request for award of Attorney's fees and expenses (Roedder)

- 11/04/93 Motion to opt out or in the alternative objection to class certification and/or the proposed settlement. (Steve Olen)
- 11/04/93 Appearance of Counsel for 3 people by Stuart Dubose.
- 11/05/93 Application to file notice of intention to appear and objection to the terms and conditions of the Class Action Settlement. (Irby)
- 11/08/93 Notice of Opt Out. (Daniell)
- 11/08/93 Petition to Intervene. Objection to class certification, class notice, denial of discovery, issuance of injunction and class settlement and alternative request to opt out of class. (Lyon)
- 11/09/93 Petition to Intervene. Objection to class certification, class notice, denial of discovery, issuance of injunction and class settlement and alternative request to opt out of class. (Lyon)
- 11/09/93 Motion to Reconsider Order setting Fairness Hearing and motion to continue. (Miller) (Wal-drop)
- 11/09/93 Filed 11/08/93. . . . Petition to Intervene/ Notice of Intention to Appear/ (2) Objections to Class Certification, Class Notice, Denial of Discovery, Issuance of Injunction and Class Settlement and Alternative Request to Opt Out of Class. (Glidewell)
- 11/09/93 Filed 11/08/93. . . . Motion to Opt Out or in The Alternative, Objection to Class Certification and/or The Proposed Settlement. (Olen)

- 11/09/93 Motion to Opt Out or in the alternative objection to Class Certification and/or The Proposed Settlement. (Finkbohner & Chiepalich)
- 11/09/93 Motion to Opt Out or in the alternative, objection to class certification and or the Proposed Settlement. (Olen)
- 11/10/93 Motion for leave to file objection to class certification, class notice, denial of discovery, issuance of injunction and class settlement and alternative request to opt out of class. (Waldrop & Miller)
- 11/10/93 Objection to class certification, class notice, denial of discovery, issuance of injunction and class settlement and alternative request to opt out of class. (Waldrop & Miller)
- 11/12/93 Order from Circuit Court. Continued until January 20, 1994 at 8AM at Eufaula.
- 11/15/93 Motion to opt out or in the alternative objection to class certification and/or The Proposed Settlement. (Olen)
- 11/15/93 Application to file notice of intention to appear and objection to the terms and [sic] conditions of the Class Action Settlement. (Irby)
- 11/16/93 Motion to opt out or in the alternative objection to class certification and or the Proposed Settlement (Finkbohner)
- 11/16/93 Motion for Order confirming that certain claims are not within the class action certified in Barbour County, are not subject to this Court's injunction, and are reserved for separate proceedings. (Roedder)
- 11/16/93 Motion for Order confirming that certain [sic] claims are not within the class action [sic] certified in Barbour County and are not subject to this Court's injunction. (Waldrop & Miller)

- 11/18/93 Objection by Additional Group A-6 Class Members (Gardner)
- 11/22/93 Motion to opt out or in the alternative, objection to class certification and or the proposed settlement. (Olen)
- 11/23/93 Statement of intention to appear at settlement hearing, objection to class certification, class notice, denial of discovery, issuance of injunction and class settlement and alternative request to opt out of class (Gaiser)
- 11/30/93 Motion to opt out or in the alternative, objection to class certification and or the proposed settlement. (Olen)
- 11/30/93 Objection to class certification, class notice, denial of discovery, issuance of injunction and class settlement and alternative request to opt out of class. (Lomax)
- 12/03/93 Motion to opt out or in the alternative, objection to class certification and or the proposed settlement. (Olen)
- 12/03/93 Motion to Opt Out. (Knight)
- 12/06/93 Motion in Intervention and Objection to Class notice, class certification, Issuance of injunction and class settlement and alternative request to opt out of class. (Howard)
- 12-8-93 Motion to Opt out or in the alternative, objection to class certification and or the proposed settlement. (Olen)
- 12-9-93 Notice of intention to appear and objection to proposed settlement agreement and inclusion within this class. (Rainey)
- 12-9-93 Motion to be excluded from class of Plaintiffs and objection to terms of the class settlement. (Alexander)

- 12-9-93 Notice of Appearance as Counsel of Record. (Alexander & Baker)
- 12-10-93 Notice of Appearance (Gudac)
- 12-10-93 Request pro-se to be included by William & Gloria Cazalas.
- 12-13-93 Brief in Respect of Constitutionality of Proposed Settlement. (Roedder)
- 12-13-93 Response to the Courts request for advice relative to class members who will be bound by the proposed settlement without receiving any benefit. (Walker)
- 12-14-93 Response to the Court's Order dated 11/12/93. (Gudac)
- 12-15-93 Brief in support of objection and motion for leave to opt out of class action (Redditt)
- 12-15-93 Brief in support of intervenor's objections to rule 23(b)(2) class certification without a right to opt out and the proposed settlement. (Redditt)
- 12-15-93 LNLIC response and opposition to pleading filed by Gussie and Willa Johnson and James R. and Linda L. Swilley entitled "Motion for Order confirming that certain claims are not within the class action certified in Barbour County and are not subject to this Court's Injunction. (Gewin)
- 12-15-93 Brief of Harvey M. Young Jr. (Watson)
- 12-15-93 Brief of Rubye and Alfred Posey (Richardson)
- 12-15-93 Notice of Intention to Specially Appear, objection to proposed class action and motion to opt out of class action. (Hannah)
- 12-15-93 Brief in Compliance with Court Order of 11/12/93. (Hannah)

- 12-15-93 Brief in Opposition to Certification Under Rule 23(b)(2). (Gale)
- 12-15-93 Brief (Atchison)
- 12-15-93 Response to the Court's Order of 11/12/93. (Reeves)
- 12-15-93 Brief in Support of Rule 23(b)(2). (Main)
- 12-15-93 Brief in Opposition to Class Certification. (Yearout)
- 12-15-93 Brief of Robie S. White. (Boynton)
- 12-16-93 Motion to opt out or in the alternative, objection to class certification and or the proposed settlement. (Olen)
- 12-17-93 Box from Bradley, Arant, Rose & White.
- 12-17-93 Motion to opt out or in the alternative etc. (Finkbohner) Two (2)
- 12-17-93 Request to be excluded from class of Plaintiffs and objection to terms of the Class Settlement. (Willingham) Six (6)
- 12-17-93 Response and Amended Response to the Court's Order dated 11/12/93. (Gudac)
- 12-17-93 Objector's Response to Court Order dated 11/12/93. (Finkbohner)
- 12-20-93 Seven (7) Objections. (Jones & Short)
- 12-20-93 Amendment to motion to opt out or in the alternative objection etc. (Finkbohner)
- 12-20-93 Motion for extension of time for filing objection and claim form. (Short)
- 12-20-93 Motion in opposition to class action etc. (Jones)
- 12-20-93 Response to Court's Order of 11/12/93. (Glidewell)

- 12-20-93 Objection by additional Group A-6 Class Members. (Gardner)
- 12-21-93 Supreme Court Ruling on Writ of Mandamus & Motion to Stay
- 12-21-93 Motion to opt out etc. (Olen)
- 12-21-93 Notice of appearance by Stewart & Williams
- 12-21-93 Motion for leave to file objection to class certification etc. (Waldrop)
- 12-21-93 Two (2) Request to be excluded from class of plaintiffs and objection to terms. (Willingham)
- 12-21-93 Objection to class certification etc. (Waldrop)
- 12-22-93 Objection to class certification etc. (Gottlieb)
- 12-27-93 Motion for Filing late objection. (Jones & Short)
- 12-28-93 Court Order advising Attorneys of Pre-Trial Conference on January 19, 1994.
- 12-29-93 Letter to Judge Robertson from Helmsing, Lyons, Sims and Leach concerning brief filed on behalf of Objectors.
- 1-3-94 Appearance for Member of Class. (Williams)
- 1-3-94 Objection to Class Certification etc. (Foster)
- 1-3-94 Motion for leave to file objection to class certification etc. (Foster)
- 1-3-94 Objection to class certification etc. (Sanchez)
- 1-3-94 Petition to Intervene. (Sanchez)
- 1-3-94 Notice of Intention to Appear. (Sanchez)
- 1-4-94 Objection to class certification etc. (Baxley)
- 1-6-94 Motion to opt out etc. (Olen)
- 1-10-94 Motion for Relief from Protective Order. (Gaiser)

- 1-11-94 Kevin Morrow's Objection to Class Certification etc. (Richardson)
- 1-12-94 Two (2) Orders from Supreme Court concerning Mandamus.
- 1-12-94 Motion to Quash Subpoenas. (Gewin)
- 1-17-94 Two (2) Boxes from Bradley, Arant, Rose & White.
- 1-17-94 Briefs, Letters etc concerning Attorney's fees.
- 1-18-94 Two (2) Motion to opt out etc. (Olen)
- 1-18-94 Amended Objection to class certification etc. (Waldrop)
- 1-18-94 Motion to Quash Subpoenas. (Wilson)
- 1-18-94 Deborah R. McDonald's objection to class certification etc. (Richardson)
- 1-19-94 Motion to Quash or Modify Subpoena filed by Walter Calton.
- 1-19-94 Motion to Quash Subpoena filed by Calton stayed until hearing can be held.
- 1-19-94 Two (2) Motion to opt out etc. (Olen)
- 1-19-94 Motion to Quash Subpoena (Gewin & Williams)
- 1-19-94 Objection to Class Certification etc. (Thiry)
- 1-19-94 Affidavit of Thurman F. Clayton
- 1-20-94 Objections to Class Certification and Proposed Settlement (Hutchinson)
- 1-20-94 Affidavit of Oscar H. Goree Jr.
- 1-20-94 Amended Notice of Intention to Appear, Petition to Intervene and Objection to Class Certification, Class Notice, Denial of Discovery,

- Issuance of Injunction and Class Settlement, and Alternative Request to Opt Out of Class (Sanchez)
- 1-20-94 Baldwin County Probate Letter Testamentary (Soesbe)
- 1-20-94 Non-Waiver of Objections
- 1-25-94 Objection by Additional Group A-6 Class Members (Gardner)
- 1-25-94 Motion for Order Confirming that Certain Claims are not within the Class Action Certified in Barbour County, are not subject to this Court's Injunction and are Reserved for Separate Proceedings (Windham)
- 1-26-94 Supplemental Affidavit of John S. Moyse
- 1-26-94 Affidavit of Betty Ann Eckles
- 1-26-94 Submission of SEVEN (7) Affidavits in Opposition to Defendant's Motion to Strike Late Objection
- 1-26-94 Motion of LNLIC with Class Counsel's Consent for an Order Certifying this Action as a Class Action for Settlement Purposes Pursuant to Alabama Rules of Civil Procedure 23 (b) (1) (A), 23(b) (B) and 23 (b)(2)
- 1-26-94 Notice of Filing Rebuttal Affidavit of Anthony L. McWhorter
- 1-26-94 LNLIC Statement Regarding Objections to Documentary Material Proffered or Submitted by the Objectors and Intervenor.
- 1-26-94 Letter Type Brief to Judge Robertson from Miller
- 1-26-94 Letter to Judge Robertson from Miller
- 1-26-94 Rebuttal Affidavit of Anthony L. McWhorter

- 1-27-94 Affidavit of Annie Wilson
- 1-28-94 Objection to and Motion to Strike the Supplemental Affidavit of Moyse
- 1-31-94 Motion for Order Allowing Claimant to Submit Proof of Claim Forms and Receive Benefits Under the Proposed Class Action Settlement (Roedder)
- 2-1-94 Objection to and Motion to Strike the Rebuttal Affidavit of Anthony McWhorter
- 2-1-94 Notice of Filing of Transcript of Rebuttal Closing Argument [sic] by Norman Waldrop in CV-92-4085 (McAllister bs LNLIC, Mobile County) (Gewin)
- 2-1-94 Motion for Order Allowing Claimant to Submit Proof of Claim Forms and Receive Benefits under the Proposed Class Action Settlement (Roedder)
- 2-4-94 Order and Judgment Conditionally Approving Class Action Settlement
- 2-7-94 Notice of Filing Affidavits (Roedder)
- 2-15-94 Motion to Modify Court Order (Beasley)
- 2-16-94 Order Extending Time for Objections
- 2-22-94 Opposition to Class Counsel's Motion to Modify Court Order, Which Class Counsel Filed on or about February 15, 1994 (Gewin)
- 2-22-94 Discovery Order
- 2-22-94 Copy of Request for Dismissal & Inclusion in Class Action CV-93-024 Barbour County (Gould vs LNLIC)
- 2-24-94 Objector's Motion to Modify Court Order (Roedder)

- 2-28-94 LNLIC Opposition to Motions and Requests by Objectors, Intervenor and other Class Members for Variance or Modification of Settlement Terms & Procedures
- 2-28-94 Consolidated Discovery Interrogatories & Request for Production by Plt, PLts 1st set of Interrogatories and Request for Production to Torchmark Corp. Directions for Answering Interrogatories and Producing Materials & Things.
- 2-28-94 Same as above to Liberty National Life Insurance Company
- 2-28-94 Objectors' Motion to Modify Court Order (Finkbohner)
- 3-1-94 Objection to Class Certification, Class Notice, Denial of Discovery, Issuance of Injunction and Class Settlement, and Alternative Request to Opt Out of Class (Watters)
- 3-1-94 Motion to Modify Discovery Order entered 2/22/94 (Miller)
- 3-1-94 Response to LNLIC Opposition to Class Counsel's Motion to Modify Court Order (Miller)
- 3-1-94 Affidavit of Donald E. Smith / Affidavit of Leo L. Crain
- 3-1-94 Motion to Order LNLIC to Disclose Rejected Claims (Richardson)
- 3-2-94 Motion of Certain Objectors to Clarify, or in the Alternative, Modify Discovery Order dated 2/22/94 (Roedder)
- 3-2-94 Letter from Judge Robertson to Larry U. Sims and William C. Roedder Jr (3-2-94)
- 3-2-94 Objectors' Motion to Modify Court Order (Richardson)

- 3-2-94 Letter to Judge Robertson from Larry U. Sims dated 3-1-94
- 3-4-94 Torchmark Corp objections to Plts 1st set of interrogatories and request for production (Elliott)
- 3-4-94 Objectors' Motion to Modify Court Order (Gale)
- 3-4-94 Notice of Appearance by Hon. Wendy A. Pierce
- 3-7-94 Objector Harvey Young Jr.'s response to Court Order of 2/4/94 on his own behalf and on behalf of the Sub-Class sought to be represented. (Watson)
- 3-8-94 Motion to compel Torchmark to respond to Plts 1st set of Interrogatories and request for production (Wilson)
- 3-8-94 Motion of certain objectors to modify discovery order dated 2/22/94 (Olen)
- 3-9-94 Objectors' Motion to Modify Court Order (Olen)
- 3-14-94 Objectors' Motion to Modify Court Order (Boynton)
- 3-18-94 Notice of Taking Depositions (3)
- 3-21-94 Motion to Require Escrow of Additional Funds (Beasley)
- 3-25-94 Motion for order that documents produced by Torchmark Corp shall be subject to the protective order heretofore entered by the Court and executed between and among Class Counsel, Defendant LNLIC and Counsel for various objectors (Elliott)
- 3-25-94 Order concerning Protective Order
- 3-25-94 Objections to Motion by Torchmark for Protective Order (Roedder)

- 3-28-94 Order Requiring Additional Escrowing of Funds
- 3-31-94 Letter from Richard L. Thiry to Judge Robertson dated 3/31/94
- 4-14-94 Motion to Strike the Affidavit of Harvey Young (Gewin)
- 5-6-94 Order setting all outstanding motions for hearing on May 19, 1994
- 5-13-94 Request for Court Consideration of Pending Motions (Roedder)
- 5-13-94 Motion for Further Discovery (Roedder)
- 5-13-94 Notice of Filing of Transcripts of Depositions etc by LNLIC V-19
- 5-13-94 LNLIC opposition to motions of Class Counsel and of various objectors to modify or delete Torchmark from the release
- 5-13-94 Motion of objectors for award of Attorneys' fees and costs (Miller) Affidavit of M. Kathleen Miller
- 5-13-94 Brief in support of the Motions of Objectors and Class Counsel to modify Court Order to delete Torchmark from the release with 6 exhibits V-20
- 5-18-94 Notice of Filing by Doson (John Samford Depo and exhibits to 6 depositions V-21)
- 5-18-94 LNLIC reply to objectors' brief regarding motion to delete Torchmark from the release.
- 5-18-94 LNLIC opposition to motion for further discovery
- 5-18-94 LNLIC opposition to motion of objectors for award of attorneys' fees and costs

- 5-18-94 Motion to Adopt Prior Motions Filed by Objectors (Glidewell)
- 5-18-94 Withdrawal of Objections of Raymond & Vice Ellsworth (Gardner)
- 5-18-94 Motion for Leave to Withdraw as Counsel for objector, Catherine M. Parker (Gardner)
- 5-19-94 Notice of Filing Rebuttal Affidavits of Thomas Hamby, Hubert Morrison and Ray Lenderman (Gewin & Pennington)
- 5-23-94 Motion to Adopt Prior Motions Filed by Objectors (Lyon)
- 5-25-94 Adoption and Reassertion of Previously Filed Objections and Motions
- 5-26-94 Amended Motion of Counsel for Objectors Guy E. Adams, et al and award for Attorney Fees. (Waldrop)
- 5-26-94 Amended Affidavit of M. Kathleen Miller
- 5-26-94 LNLIC Notice that if the Court's February 4, 1994 Modifications are the final Modifications to the Settlement, they are accepted by LNLIC
- 5-26-94 Findings of Fact and Conclusions of Law
- 5-26-94 Order & Final Judgment
- 5-27-94 Acceptance of Modification to Settlement Agreement (Wilson)
- 6-20-94 Motion to Withdraw as Counsel for William T. Beasley (Richardson)
- 6-20-94 Motion to Alter, Amend or Vacate a Judgment. (Howell)
- 7/5/94 Five (5) Notice of Appeals etc to the Supreme Court

7/6/94 Two (2) Notice of Appeals etc to the Supreme Court

7/7/94 Nine (9) Notice of Appeals etc to the Supreme Court

8/16/94 Sixteen (16) Letters of Transmittal of Notice of Appeal etc by Trial Clerk to Appellate Clerk

8/16/94 Motion for Substitution by Rhonda Udrescu on behalf of Brenda L. Havard (2)

8/30/94 Certificate of Completion of Clerk's Record on Appeal

8/30/94 Certificate of Completion of Record on Appeal

IN THE CIRCUIT COURT FOR
BARBOUR COUNTY, ALABAMA
Clayton Division

CHARLIE FRANK ROBERTSON,*
for himself, and in his *
representative capacity for the *
class of persons described *
herein, *

Plaintiff, *

vs. *

LIBERTY NATIONAL LIFE *
INSURANCE COMPANY, *

Defendant. *

* Case Number:
* CV-92-021

COMPLAINT

(Filed May 12, 1992)

1. Plaintiff is over the age of 19 years and resides in Barbour County, Alabama.

2. Defendant is a domestic corporation with its principal place of business located in Birmingham, Jefferson County, Alabama. Said Defendant does business by agent in Barbour County, Alabama.

3. Plaintiff brings this action on behalf of himself and all members of a class composed of persons who have had unauthorized loans placed against their policies of insurance by Defendant. Plaintiff alleges that the class is so numerous that joinder of all members is impracticable and that the total membership of the class may be well in excess of 100 persons. There are questions of law or fact common to the class, such as the fraudulent acts of

Defendant relating to its policyholders that are substantially similar in nature as well as the laws applicable thereto. Plaintiff's claims as a representative of the case are typical of the claims of the class. In his representative capacity, Plaintiff will fairly and adequately protect the interests of the class.

4. The prosecution of separate actions by individual members of the class would create a risk of inconsistent or varying adjudications with respect to individual members of the class which would establish incompatible standards of conduct for the party opposing the class. The following paragraphs of the complaint will more particularly describe the aforementioned risk of incompatible standards of conduct.

COUNT ONE

5. Plaintiff realleges paragraphs 1 through 4 of the complaint as if set out here in full.

6. Defendant issued a policy of life insurance to Plaintiff being number LNA001040687.

7. Defendant, without authority, took out a loan in the name of the Plaintiff against the above referenced policy of insurance.

8. Defendant knew, or reasonably should have known, that Plaintiff did not take out a loan against his policy, nor authorize anyone else to do so.

9. Plaintiff received no proceeds from the loan at any time.

10. The loan accrued interest and was against Plaintiff's policy.

11. The acts by Defendant were intentional, malicious, wanton, or done so recklessly as to amount to an intentional act.

12. As a proximate consequence of the Defendant's wrongful acts, Plaintiff was injured and damaged as follows: he suffered mental pain and anguish; he incurred interest on the loan; his credit was affected; and he was otherwise injured and damaged.

WHEREFORE, Plaintiff demands judgment against Defendant in such amount of compensatory damages as a jury may award under the facts and circumstances of this case; Plaintiff demands a separate amount as punitive damages; and his costs.

COUNT TWO

13. Plaintiff realleges paragraphs 1 through 12 of the complaint as if set out here in full.

14. Plaintiff is informed and believes, and upon such information and belief, alleges that numerous other policy holders had unauthorized loans taken out against their policies; that Defendant knew, or reasonably should have known, that the unauthorized loans were being made and charged against the policies; and that Defendant condoned the activity of its employees or agents in the fraudulent scheme.

WHEREFORE, Plaintiff, on behalf of himself, and all members of the above referenced class, demands judgment against Defendant as follows:

- a. An adjudication by the Court relating to the unauthorized loans;
- b. Entry of judgment against Defendant for the full amount of the injuries and damages suffered by the members of the class;
- c. Injunctive relief as deemed necessary by the Court;
- d. Such other relief to which Plaintiff and the members of the class may be entitled;
- e. A reasonable attorney's fee for Plaintiffs attorneys; and
- f. His costs of this action.

/s/ Jere L. Beasley
JERE L. BEASLEY,

/s/ Thomas J. Methvin
THOMAS J. METHVIN, Attorneys
for Plaintiff

OF COUNSEL:

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JURY DEMAND

PLAINTIFF HEREBY DEMANDS TRIAL BY JURY
ON ALL ISSUES OF THIS CAUSE.

/s/ Jere L. Beasley
OF COUNSEL

IN THE CIRCUIT COURT FOR
BARBOUR COUNTY, ALABAMA
Clayton Division

CHARLIE FRANK ROBERTSON, *
for himself, and in his *
representative capacity for the *
class of persons described herein,*

Plaintiff, *

vs. *

LIBERTY NATIONAL LIFE *
INSURANCE COMPANY, *

Defendant. *

Case Number:
CV-92-021

PLAINTIFF'S FIRST AMENDMENT TO COMPLAINT

(Filed October 2, 1992)

COUNT III

15. Plaintiff realleges paragraphs 1 - 14 of the original complaint as if set out here in full.

16. Plaintiff brings this action on behalf of himself and all members of a class composed of persons, who had cancer insurance policies with Liberty National Life Insurance Company prior to 1986, and whose policies were then switched, or there was an attempt to switch, to a new cancer insurance policy with Liberty National during or after 1986. Plaintiff alleges that the class is so numerous that joinder of all members is impractical and that the total membership may well be in excess of 1,000 people. There are questions of law or fact common to the class, such as the fraudulent acts of Defendant relating to its policyholders that are substantially similar in nature,

as well as the laws of applicable thereto. Plaintiff's claim as a representative of the case is typical of the claims of the class. In his representative capacity, Plaintiff will fairly and adequately protect the interest of the class.

17. The prosecution of separate actions by individual members of the class would create a risk of inconsistent or varying adjudications with respect to individual members of the class which would establish incompatible standards of conduct for the party opposing the class. The following paragraphs of the complaint will more particularly describe the aforementioned risk of incompatible standards of conduct.

18. Defendant Liberty National Life Insurance Company issued a policy of cancer insurance to Plaintiff (No. 27542676) on January 1, 1987.

19. On the face of the application, it shows that this cancer insurance policy was replacing an older cancer insurance policy (No. 24373745) with Liberty National.

20. The new replacement policy was of substantially less value to Plaintiff than the old policy of cancer insurance.

21. The benefits were much less under the new policy.

22. Defendant fraudulently stated to Plaintiff that the new policy was much better than the old policy and that it would be in Plaintiff's best interest to take out the new policy.

23. The representations by Defendant were false and Defendant knew they were false.

24. The acts by Defendant were intentional, malicious, wanton or done so recklessly as to amount to intentional act.

25. As a proximate consequence of Defendant's wrongful acts, Plaintiff was injured and damaged as follows: he suffered mental pain and anguish; he has a policy of less value, with less benefits; he lost benefits under the old policy; and he was otherwise injured and damaged.

WHEREFORE, Plaintiff demands judgment against Defendant in such an amount of compensatory and punitive damages as a jury may award under the facts and circumstances of this case, plus his costs.

COUNT IV

26. Plaintiff realleges paragraphs 1 - 14 of the original complaint and paragraphs 15 - 25 of this amended complaint as if set out here in full.

27. Plaintiff is informed and believes and, upon such information and belief, alleges that numerous other policyholders of Defendant had their cancer policy switched in 1986 or later.

28. Defendant knew that this was happening and encouraged its agents to make the switch by giving them a higher than normal commission for selling a new cancer policy and canceling an old cancer policy.

29. A pattern and practice of this type behavior and activity occurred throughout the state and involved numbers of agents and policyholders.

30. Defendant condoned and fostered the activities of its employees or agents in this fraudulent scheme.

31. Defendant profited as a result of the wrongful acts.

WHEREFORE, Plaintiff, on behalf of himself and all members of the above referenced class, demands judgment against Defendant as follows:

- a. an adjudication by the Court relating to the cancer policies being switched;
- b. entry of judgment against Defendant for the full amount of injuries and damages suffered by the members of the class;
- c. injunctive relief as deemed necessary by the Court;
- d. such other relief to which Plaintiff and members of the class may be entitled;
- e. a reasonable attorney's fee for Plaintiff's attorneys; and
- f. his costs of the actions.

/s/ Jere L. Beasley
JERE L. BEASLEY,

/s/ Thomas J. Methvin
THOMAS J. METHVIN,
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JURY DEMAND

PLAINTIFF HEREBY DEMANDS TRIAL BY JURY
ON ALL ISSUES OF THIS CAUSE.

/s/ Jere L. Beasley
OF COUNSEL

CERTIFICATE OF SERVICE

I hereby certify that I have served a copy of the foregoing document upon all counsel of record *as listed below* by placing a copy of same in the United States Mail, first class, postage prepaid on this the 1st day of October, 1992.

/s/ Jere L. Beasley
OF COUNSEL

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Birmingham, Alabama 35203

Mr. Horace G. Williams
P.O. Box 896
Eufaula, Alabama 36072-0896

Mr. Boyd Whigham
Post Office Box 475
Clayton, Alabama 36016

IN THE CIRCUIT COURT FOR
BARBOUR COUNTY, ALABAMA
Clayton Division

CHARLIE FRANK ROBERTSON, *
for himself, and in his *
representative capacity for the *
class of persons described herein,*
Plaintiff, *

Case Number:
CV-92-021

vs. *

LIBERTY NATIONAL LIFE *
INSURANCE COMPANY, *
Defendant. *

MOTION FOR ORDER CERTIFYING CLASS ACTION

(Filed October 2, 1992)

Plaintiff moves the Court pursuant to Rule 23, Alabama Rules of Civil Procedure, for an order certifying this cause as a class action and designating Plaintiff as class representative.

Plaintiff brings this action on behalf of himself and other similarly-situated owners of Liberty National cancer policies purchased prior to 1986 whose cancer policies were switched, or an attempt to switch was made, to new cancer policies during or after 1986 under the pretext that the new cancer policies provided better coverage. The action is brought for damages for Defendant's scheme to trick owners of cancer policies that provided comprehensive coverage for radiation and chemotherapy treatment, drugs, and other benefits into switching to an "updated" cancer policy that provided substantially less radiation and chemotherapy coverage, drugs coverage, and other benefits.

Plaintiff submits that this action should be certified as a class action under Alabama Rules of Civil Procedure 23 (a) and 23 (b) (2) and 23 (b) (3). Plaintiff submits that although 23 (b) (2) and 23 (b) (3) are the preferable classes of certification in this matter, class certification under 23 (b) (1) is proper and in the alternative, Plaintiff seeks class certification pursuant to 23 (a) and 23 (b) (1).

Plaintiff is able to meet the evidentiary requirements for class certification under A.R.Civ.P. 23 (a) and 23 (b) (1), (b) (2), and (b) (3).

/s/ Jere L. Beasley
JERE L. BEASLEY,

/s/ Thomas J. Methvin
THOMAS J. METHVIN,
Attorneys for Plaintiff

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CERTIFICATE OF SERVICE

I hereby certify that I have served a copy of the foregoing document upon all counsel of record *as listed below* by placing a copy of same in the United States Mail, first class, postage prepaid on this the 1 day of October, 1992.

/s/ Thomas J. Methvin
OF COUNSEL

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Birmingham, Alabama 35203

Mr. Horace G. Williams
P.O. Box 896
Eufaula, Alabama 36072-0896

**IN THE CIRCUIT COURT FOR
BARBOUR COUNTY, ALABAMA
Clayton Division**

LOUISE PEEL,
Plaintiff,

vs.

LIBERTY NATIONAL LIFE
INSURANCE COMPANY,
Defendant.

*
*
*
*
*
*
*

COMPLAINT

(Filed October 6, 1992)

STATEMENT OF THE PARTIES

1. Plaintiff Louise Peel is over the age of nineteen (19) years and resides in the Clayton Division of Barbour County, Alabama.

2. Defendant Liberty National Life Insurance Company (hereinafter "Liberty National") is a domestic corporation with its principle place of business in Birmingham, Alabama and does business by agent in Barbour County, Alabama.

STATEMENT OF THE FACTS

3. Prior to 1987, Plaintiff took out a cancer insurance policy on herself and her husband with Defendant.

4. At all times material hereto, Plaintiff paid premiums on the policy to Defendant.

5. In 1987 or 1988 Defendant canceled the cancer insurance policy and sold Plaintiff and her husband a new policy with less benefits.

6. Defendant represented to Plaintiff that the new policy was a better policy with increased benefits.

7. The representations by Defendant were false and Defendant knew they were false.

8. Plaintiff relied upon the false representations and purchased the new policy.

9. On December 29, 1990, Plaintiff's husband, Kenneth Peel was diagnosed with cancer.

10. In 1991, Kenneth Peel filed a claim on his cancer insurance policy.

11. Liberty National paid benefits based on the new cancer policy taken out in 1987 or 1988.

12. The benefits paid were substantially less than would have been paid under the older cancer policy which had been canceled.

13. In 1991, Plaintiff canceled her cancer insurance policy because her husband's policy had not paid full benefits.

14. In March 1991, Kenneth Peel died.

15. Plaintiff is now responsible for her husband's unpaid medical bills.

16. Plaintiff did not know, and reasonably should not have known, that any fraud had been perpetrated upon her until 1991 when the medical bills were not paid in full.

17. At all times material hereto, Plaintiff made payments on the new policy and such policy was in full force and effect.

COUNT ONE

18. Plaintiff realleges paragraphs 1 through 17 of the complaint as if set out here in full.

19. In 1987 or 1988, Defendant devised and entered into a scheme to defraud Plaintiff and others by canceling her and her husband's cancer policy and selling them a new policy which provided less benefits.

20. Defendant's conduct under the circumstances amounted to actual malice.

21. Defendant's conduct was part of a pattern or practice of fraud or other intentional wrongful conduct.

22. As a proximate consequence, Plaintiff was injured and damaged as follows: she lost the benefit of her policy and her husband's policy; she was forced to pay the difference for her husband's medical bills; she suffered mental anguish and will continue to do so; and she was otherwise injured and damaged.

WHEREFORE, Plaintiff demands judgment against Defendant in an amount a jury may award for compensatory and punitive damages plus interest and costs.

COUNT TWO

23. Plaintiff realleges paragraphs 1 through 17 of the complaint as if set out here in full.

24. Defendant fraudulently failed to disclose to Plaintiff that the new cancer insurance policy was of less value than the old ones.

25. Plaintiff altered her position by accepting the new policy.

26. Defendants' conduct was part of a pattern or practice of fraud or other intentional wrongful conduct.

27. Defendants' conduct under the circumstances amounted to actual malice.

28. As a result of Defendant's fraudulent suppression, Plaintiff was injured and damaged as alleged in paragraph 22.

WHEREFORE, Plaintiff demands judgment against Defendants in an amount a jury deems reasonable for compensatory and punitive damages plus interest and costs.

/s/ Jere L. Beasley
JERE L. BEASLEY,

/s/ Thomas J. Methvin
THOMAS J. METHVIN,
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OF COUNSEL:

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JURY DEMAND

PLAINTIFF HEREBY DEMANDS TRIAL BY JURY
ON ALL ISSUES OF THIS CAUSE.

/s/ Jere L. Beasley
OF COUNSEL

IN THE CIRCUIT COURT WITHIN AND FOR
THE COUNTY OF BARBOUR
STATE OF ALABAMA

CHARLIE FRANK ROBERTSON,]	
PLAINTIFF,]	
- VS -	]	CIVIL ACTION
	]	<u>NO. CV-92-021</u>
LIBERTY NATIONAL LIFE]	
INSURANCE COMPANY,]	
DEFENDANT.]	

BEFORE: HON. WILLIAM H. ROBERTSON, CIRCUIT
JUDGE

DATE: FRIDAY, OCTOBER 16, 1992, AND MONDAY,
MARCH 8, 1993

PLACE: BARBOUR COUNTY COURTHOUSE, CLAY-
TON, ALABAMA

TIME: 10:00 A.M.

REPORTER'S OFFICIAL TRANSCRIPT

APPEARANCES

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* * *

[p. 3] WHEREUPON, the following proceedings were
had and entered of record as follows:

MR. MAIN: We are ready if you are ready for
us to begin.

THE COURT: Yes, sir.

MR. MAIN: Since it is our motion, if it please
the Court, I'll begin our argument in favor of certification
of this class, and that is all I understand we are here for,
your Honor.

THE COURT: Unless we have some other motions – motion to compel, but we can take care of that, but that is all?

MR. MAIN: Yes, sir. Your Honor, Rule 23 has a requirement in there that the court as soon as practical certify a class. It is our position a certification of a class is a conditional thing throughout the course of a class action, that the court at any time through discovery or at any point in a case can change its mind and make subclasses. Actually, the court can decertify a class if it chooses down the road, and I assume one of the first questions would be why certify a class at the very beginning. Why does it need to be done quickly? Well, the primary reason I would give you is there are statute of limitation problems that bar a cutoff when the class is certified. In other words, if the court certifies this [p. 4] general class, and what we are asking the court is, in simple terms, is a class of Liberty National Life Insurance cancer policyholders whose old cancer policy was switched for a new cancer policy with new benefits –

THE COURT: Fraud?

MR. MAIN: Fraudulently switched for new benefits.

THE COURT: Made a misrepresentation to them it was a good or better policy and switched the policy because the old policy was too good. That is basically what y'all are claiming?

MR. MAIN: Yes, sir, and we have some affidavits. First of all, it is our position that the court can make this decision – either on your motion or its own

motion it could have made the decision based just on the pleadings, but we have some affidavits that we would like to supply the court with of three – we have three affidavits we would like to file.

MR. WILLIAMS: Judge, we are going to object to the affidavits. He's brought something in here we haven't seen, and we haven't had a chance to depose these people, and before this thing can be certified a class action we have to have a chance to depose these people, because that is what they said, we would object to it.

MR. MAIN: I don't think there is any [p. 5] requirement for a deposition, it is determining whether it is in the best interest of this group of people to be certified at this time.

THE COURT: You want to file those with the court? Is that what you want to do?

MR. MAIN: I want to file these with the court, and Robert Stewart – and Robert Stewart is a former president of Liberty National Life Insurance, and a former chairman of the board, and he describes in his affidavit that there are thousands of policies in which – the Liberty National Life Insurance cancer policies in which the old policy was switched for a new policy.

The second affidavit is the affidavit of John Miller, and John Miller has been with Liberty National since 1947. He was a regional vice-president when he retired, and he had a number of agents under him, 250 at the time he retired, that were directly answering to him, and in his affidavit he shows that there was a plan of switching old cancer policies for new ones with diminished benefits.

Your Honor, in a class action there are four things that we have got to show or the court has got to be reasonably satisfied with in order to certify the class. One is numerosity, that there are enough claims of the same likeness that it is judicially economic to do it in one. [p. 6] And I think those affidavits – typicality and commonality are the other two. And it is our position that these claims are all typical in that an old policy was replaced by a new policy with lesser benefits. And then the last item is adequacy of the class representative, and there is an affidavit of the class representative in which he testifies that he will be more than energetic in pursuing this matter, certainly willing to answer any questions.

Your Honor, I don't know of anything specific that I have other than what I said, other than that there are very few cases in Alabama on class actions, and the cases that we do have refer to the federal cases on class actions because we copied Rule 23 from the federal ones, and we can supply you a number of cases to the effect that – well, you know, that discovery is not a prerequisite to certification. I would quote one from the – let's see, *Harriss Versus Pan Am World Airways*, 74 FRD 24, Rule 23(c), one clearly contemplates early action by the court, threw out *Newberg On Class Actions*. The language is that the court can determine class certification basically on the pleadings. Section 7.12 of Newberg says that, "Rule 23(c) requires a class ruling 'as soon as practicable' after the commencement of an action. Moreover, the court may alter or amend a class action at any time before the decision on the merits . . . though not [p. 7] specifically permitted by the rule, courts have also altered or amended their class

rulings after merits decisions, but most initial class determinations are based on the pleadings of the parties and are issued at a relatively early stage of the proceedings." I show the court this section from Newberg 7.12 that I just read into the record.

That is all.

MR. WILLIAMS: I heard you state affidavit earlier. Am I to understand this is the one that is supplied affidavits instead.

MR. MAIN: There are three of them. We gave you a stack of three.

MR. WILLIAMS: You gave all –. Is that Charlie Robertson?

MR. COLEMAN: And we need the exhibit to Robert Stewart.

MR. METHVIN: We don't have a copy here, but we can get it for them.

MR. MAIN: The two exhibits that we have on Robert Stewart are the annual report of *Torchmark* and its reference to the twenty-eight million dollars worth of cancer policies that were changed, and we have an exhibit to his where the agent showed him the difference between his old policy and his new policy and misrepresenting to [p. 8] him what the old policy –

MR. METHVIN: It is his old policy and new policy.

MR. COLEMAN: Are you filing copies of them?

MR. WILLIAMS: Judge, I'm going to argue that. I'll leave the technical part of it to Don or Britt. We have a motion to continue filed. This pleading or this amendment to the original complaint, as the original complaint started off, was for a totally different and unrelated problem for which Charlie Robertson claims. But the -

THE COURT: Motion to continue what?

MR. WILLIAMS: Sir?

THE COURT: Motion to continue what?

MR. WILLIAMS: Motion to continue this hearing today as far as -

THE COURT: (Interposing) We are already in the hearing, so I'm going to deny any kind of a motion for continuing. We are going to go on with what we have got. I'm not going to say I'm going to rule on it today, but we are going to make the argument.

MR. WILLIAMS: Well, if we can have some time, and this is not forced on us. I want to bring to the court's attention that we thought we had the time to take the depositions. Tom indicated a couple of dates they [p. 9] would be made available to us, possibly yesterday, and Jere called back and said they are not available. So, we tried to get into this and ask our questions.

THE COURT: All right. Let's go ahead.

MR. WILLIAMS: That will be fine.

MR. JAMES: Your Honor, I think in class action cases the most important part of the case is the class certification issue. You are either trying an individual

man's case or you are trying a thousand or two thousand or twenty thousand people's cases. So, the most important thing in the case is the class certification issue. When we got certification, of course, on or about October 5th with this amended complaint, our response was filed day before yesterday, I guess within the ten days, asking for more definite statements about what Mr. Robertson says was done to him, and what was said to him that he says is false, and who said to it to him, and when it was said to him, and what he did in reliance on it, and how he was damaged. That is not in the pleadings except in a very broad brush sense, and so we are here today, about ten days after we got served with a complaint, addressing issues about class certification, which is the most important issue in the case I believe, without really knowing what Mr. Robertson is claiming, who he says said something wrong to him, what was wrong with that. As we understand it, he [p. 10] is claiming an individual agent - unnamed individual agent of Liberty National said something to him in a conversation about his policy that he contends to be fraudulent, and they want to bootstrap from that to say the same thing was said to thousands and thousands of other policyholders. And there are probably hundreds of different agents involved. So, one of the monumental problems in this case is this is, as pled, a basic claim of misrepresentation by an individual Liberty National agent to an individual policyholder. And what was said in that conversation is the gist of the case. Was it a misrepresentation or was it not? Was there reliance on it? Was the plaintiff damaged? So, our principle thrust, your Honor, is first of all, the class certification is way premature because we don't know what Charlie

Robertson is contending. We don't know what these other people are saying happened to them, and we don't have an opportunity to know whether he has really just got an individual claim or whether he, in fact, has some claim that is common to all of these other thousands of people that they say made an exchange.

THE COURT: Do you have any authority? They have given me some authority about certifying it as seriously as possible and practical and all that. Do you have -

MR. JAMES: (Interposing) Yes, sir, we have a [p. 11] brief which we will -

THE COURT: (Interposing) Y'all have already filed a brief?

MR. MAIN: Yes, sir.

MR. JAMES: Yes, sir. Your Honor, they have made some arguments that discovery is not appropriate in class certification hearings. I'll quote to you, and this is in our brief, so I won't belabor it, and Mr. Mane is correct, there is not a great deal of class action law in the State of Alabama, but the Supreme Court has recognized that they looked at federal law as persuasive because it is the same rule, no change.

There is some Alabama law that we will cite to your Honor which supports our position, but by and large it is federal law. The Second Court of Appeals has said in a case I cite, they fail to allow discovery. This is a quote, "Where there are substantial factual issues relevant to certification of the class, makes it impossible for the party seeking discovery to make an adequate presentation either in its memoranda of law or at the hearing on the

motion if one is held." And we are here, as we understand it, on a hearing on their motion on a little old -

THE COURT: (Interposing) What are you asking for? Are you asking to take what, depositions before -

MR. JAMES: (Interposing) We asked Tom Methvin [p. 12] - we asked Tom whether he was going to put on witnesses today. He said he was going to put on a plaintiff and a couple of other people, and then he sent me a notice yesterday identifying Miller and Stewart or day before yesterday, and we talked about trying to get them scheduled for depositions, and I asked Jere yesterday and with the shortness of time we can't produce them for the deposition. We need to understand, your Honor, what these people are contending. We don't know how many people are similarly situated with these people, what policies that they exchanged for what policy. Our records show that the plaintiff here, Mr. Robertson, has never had a claim under his old policy or his new policy, and yet he is seeking to represent people who may have had claims under one policy or another Policy, but we need to be able to take his deposition, find out why he thinks he has been hurt, that he makes the bald allegation that one policy is better than the other policy. We think it is appropriate for the court to hear testimony from qualified experts as to whether, in fact, one policy is better than the other.

THE COURT: Well now, that would come on a summary judgment motion whether there is any kind of - you know, I don't need to know that to determine whether it is a class or not.

MR. JAMES: We think, your Honor, that the Rule [p. 13] 23 requires you to make several factual and legal determinations, just a finding of fact in order to certify a hearing, and it is based on an evidentiary hearing at which testimony, subject to cross-examination, ought to be proper.

THE COURT: What are you all - what is your position on it?

MR. MAIN: Your Honor, there is no requirement for an evidentiary hearing, period, for a class certification. The section I gave you on Newberg says it can be done on the pleadings. We have gone further than that and given you affidavits. You do not go to the merits of the case on the class certification because it would be giving the defendants two bites at the apple. The plaintiff would have to prove his case twice.

MR. JAMES: You don't get to the merits, but there are many factual and legal issues, and I would like to talk about what those are.

THE COURT: Okay.

MR. JAMES: Let me say Mr. Mane [sic] has cited Newberg. I'll quote Newberg. Newberg is like a lot of other people in his book, and they are in different context, but, "Discovery by the defendant," that is, "class representatives may be appropriate in order to probe affidavits submitted in support of the class action, to [p. 14] test the plaintiff's alleged typicality of claims," that is how Charlie Frank Robertson relates to these other thousands of people who is purported to represent, "to challenge specific areas which the defendant reasonably

believes involved potential conflicts with class member . . . " We think clearly some people as Piedy [sic] says, hindsight is fifty-fifty. Some people are better off with an old policy and some people are better off with a new policy. Charlie Frank Robertson doesn't know yet because he has never had a claim whether he is better off under one than the other.

Then, they are saying you are supposed to certify immediately. The Second Circuit says, the language "as soon as practicable after commencement of the action" does not mandate precipitate action.

THE COURT: All right. You agree with him the facts that you say I've got to find are those four basic qualifications?

MR. JAMES: You have got to find two sets of facts here. There is 23(a) says you got to find all of the following. The class is so numerous that joinder of all members is impractical.

THE COURT: Well, I assume y'all admitted that if they have all the policyholders.

MR. JAMES: I haven't seen the affidavit. I [p. 15] didn't get a chance to read it and I don't know how many there are. Number two, there are questions of law or fact common to the class.

THE COURT: The claims and defenses of the representative party are typical of the claims and defenses of the class, in other words, Charlie Frank Robertson is just like everybody else he purports to represent, and the representative party will fairly and adequately represent the interest of the class, that is both

with respect to Charlie Frank Robertson and his lawyers. Whether they have got some conflict I don't know, but they are purported to represent one class of people here and another class of people here, and then if you make all of those four findings based on records, then there are three different - three different kinds of class actions.

One, is if Charlie Frank is trying his case individually, and that is what we believe he has is an individual claim of fraud, is trying his claim individually, has some preclusive effect on somebody else who may have changed or exchanged claims. We say it can't possibly be a preclusive case, it is not a (b)(1) class, a (b)(2) class, is an injunctive or declaratory relief case, and I don't believe they are asking for injunctive -

THE COURT: (Interposing) I think they are asking for more.

[p. 16] MR. MAIN: We are asking for a (b)(2) class. We are asking that they be enjoined from continuously swapping old policies for new policies with a lesser benefit and, so, we are asking for that.

MR. JAMES: Then (b)(3) is the money damages class.

THE COURT: You are asking for that?

MR. MANE [sic]: We are asking for that.

THE COURT: And then the court, according to the rule, has defined that the question of law or fact common to the members of the class predominant over questions affecting only individual members.

MR. JAMES: Now, your Honor, there are a number of points here. One, they are purporting to represent all people who exchanged Liberty National policies. We have got these policyholders in a large number of states. Presumably an agent having a communication with an insured in Georgia that is alleged to be fraudulent is governed by Georgia law. One in Mississippi is governed by Mississippi law, one in Florida is by Florida law. So, we don't believe there is a common question of law in this huge class that that is purporting to represent. Secondly, and probably the most important point, is the question of fact as what the individual agent said to the insured in the sales agreement, and that is different in every case. [p. 17] That is different with every case. If I understand the affidavit from Mr. Stewart, he says he had a policy with an agent in Birmingham and an agent in Birmingham said something to him. Okay. Charlie Frank Robertson's agent is over here in -

THE COURT: (Interposing) If I understand this case, the whole deal is it was a plan or a scheme by Liberty National for trading out and getting people to give up their old cancer policy for a new cancer policy, and wouldn't pay the benefits, and he saved Liberty National a lot of money.

MR. JAMES: That is a bare allegation in the complaint, and I think it is incumbent upon the court before you certify a class based on that allegation, we don't try the merits but that you have an opportunity to find out what it is Charlie Frank said to him and why it is, in fact, of lesser value to him. And we are - I mean, we are not to that point yet, your Honor.

THE COURT: Well, that point is a point that would be taken up on Motion for Summary Judgment. You know with the merits of it that is getting into the merits of whether the policy is good or bad, you know better or worse. That is something you got that doesn't have anything to do with certifying the class as I see it.

MR. JAMES: Well, I agree with your Honor that [p. 18] Charlie Frank's case is something that can be presented. I mean, there may be a dispute in the testimony and it wouldn't be subject, but the issue there is the communications between Charlie Frank and the agent, and they are asking you to certify a class of all of these thousands of people based on what they claim.

THE COURT: Let me ask you this. What do you propose that you be allowed to do before I make the ruling?

MR. JAMES: We think, your Honor, that we should have an opportunity to depose the people who are submitting affidavits here in support of this, that we have an opportunity to come in and put on our evidence, and that the court have an opportunity -

THE COURT: (Interposing) What kind of evidence do you purport to put on?

MR. JAMES: Well, we intend to put on, if we have an opportunity to do it, the people from the Eufaula office of Liberty National who dealt with Mr. Robertson. We would like to put on an actuary to talk about the issues raised in these affidavits about what the differences in these policies are, we would put on whatever numerical statistical information -

THE COURT: (Interposing) That is getting into the factual part of whether the policy is better or worse. That is something we have got to deal with down the road. [p. 19] That doesn't have anything to do with the class as I see it.

MR. JAMES: Well, your Honor has got to find, as I understand the rule, that the questions of law and the questions of fact are all -

THE COURT: (Interposing) Well, that is going to be - that is going to be the question, whether the policy, assuming whatever else they say is right, that you went out and changed it, whether the second policy or the first policy is the best. Right? I mean, that is what the whole lawsuit is going to turn on.

MR. JAMES: Well, I think the issue is the policies are different. They are different.

THE COURT: Okay. You know, they are alleging it was a fraud, that the whole company has set out to defraud the policyholders by exchanging a policy that wouldn't pay as much for one that would. Now isn't that it?

MR. MAIN: Yes, your Honor. And, may I interject for just a moment, we are only asking that you conditionally - all certifications of all class actions in my opinion are conditional since the court has to cut off the tolling of statute, but discovery goes on three or four months.

THE COURT: Now, we are not going to do it that [p. 20] long, I guarantee you that.

MR. MAIN: Well, it could take that long.

THE COURT: It ain't going to take that much time. So, that is enough, go ahead.

MR. JAMES: Okay. And, your Honor, the rule says you are supposed to be able to find, based on the evidence presented to you, that a class action is superior to any other way; that is, superior to having people litigate their own individual claims.

THE COURT: Well, if you got a thousand claims that is going to be superior, ain't it?

MR. JAMES: Well, I think that is up to what an individual - some insured might want to -

THE COURT: (Interposing) Well, that doesn't have to be a member of the class.

MR. JAMES: On a (b)(3) they have the right to opt out.

THE COURT: And file a suit.

MR. JAMES: And, you are supposed, your Honor, to consider the desirability or undesirability of concentrating the litigation of the claims in the particular forum. Whether this is the right forum for you to try every cancer exchange Liberty National did, and that is something that the rules say you are to consider.

THE COURT: Where else could it be done?

[p. 21] MR. JAMES: It could be anywhere where there are more policyholders, a larger based policyholder -.

THE COURT: Can you get the thing into federal court some kind of way?

MR. JAMES: We would like to.

THE COURT: I would like for you to.

MR. JAMES: And then the last thing are the difficulties of managing a class action, particularly in this forum, or managing class actions generally. Now, I need to respond to some things.

The plaintiff has the burden of proof of establishing to you that all of these prerequisites have been met, and we submit we have the right to challenge that, and with every - a due process right to be ready to challenge it and take depositions and have adequate notice and opportunity to put on some evidence. Now, they say it is just conditional - the certification conditional and you can change your mind. There are a number of cases that we have cited that says while the rule says the court can conditionally certify you still have to make the findings of facts and conclusions under Rule 23, conditional certification doesn't mean maybe it's going to be certified or we will let you put on some stuff next month or whatever to see whether it really ought to be a class action, that is not what conditional certification means. Conditional [p. 22] certification means you have, first, got to go through all the hoops and do it right, then the court can always change its mind after it has gone through the hoops.

THE COURT: Getting back to this, you want to take the deposition of these three folks who filed affidavits?

MR. JAMES: Yes, sir.

THE COURT: All right.

MR. JAMES: And we would like to have a reasonable time period; and we have got your order last week to prepare our case – to put on our case.

THE COURT: All right. What kind of case do you have? We are not going to get into a factual deal about whether it is fraud committed or what somebody said to another one. That is not what we are talking about in certifying the class.

MR. JAMES: Well, we think that is at collateral issue whether somebody ought to be class. We are not going to try a bunch of cases here, but we need to understand what Mr. Robertson says his claim is and how it arose.

THE COURT: All right, I understand that. But you are not going to come get somebody up here – to put somebody on that will say he did not tell him that. We are not going to litigate that. I believe you have a right – [p. 23] I believe you have to find out what they say happened, but we are not going to get on certifying the class. Now, when you get to the summary judgment thing, then whatever you want to put in is fine. But to have a disputed fact situation, I don't see how that can have any effect on whether the class is certified or not.

MR. JAMES: Your Honor, only in the sense that Mr. Robertson like every other policyholder's claim is based on what an individual agent told him in an individual conversation.

THE COURT: I understand that, and you understand he is – the agent is going to say one thing and he is going to say another.

MR. JAMES: Like thousands of other folks.

THE COURT: So, there is no need to put that on about a class action. That is a summary judgment thing, okay.

MR. JAMES: The allegation is that the company set out to do this with some evil motive.

THE COURT: Right.

MR. JAMES: We believe in the certification hearing the court needs to see and hear what the company did and how it proceeded to train agents for purposes of informing insureds about the opportunity to exchange policies. And we believe we have the right to demonstrate [p. 24] to the court that some people exchanged and some people didn't.

THE COURT: Well, I'm sure they will stipulate some people exchanged and some people didn't.

MR. JAMES: But I believe they are making bare allegations about what the company's motive –

THE COURT: (Interposing) Well, that is all the facts – they have got to prove all of those. They have got to prove those, but, you know, what bearing has that got on whether it is a class or not?

MR. JAMES: Because, your Honor, you have to make the determination that the basis of their claim, the basis is common to everybody.

THE COURT: Well, the basis of their claim is that Liberty National set out with an intent to defraud all the policyholders into trading policies. Now, that is going

to be common to everybody, if that is their claim, and that is what I understand the claim to be.

MR. JAMES: But, your Honor, we believe that you have to not try it on the merits, but it is incumbent upon you to hear what the basis of their claim is.

THE COURT: I understand that. I agree with you. I agree with you, but you don't think you have the right to come in and try to defend that claim?

MR. JAMES: No, sir, I'm not talking about [p. 25] defending the claim. I can distinguish between circumstances wherein a security is offering - there is a mass mailing to thousands of people that all contains the allegedly fraudulent statement. Okay. That is class action material versus a claim that is based just on what Ronnie Peel over in Eufaula said to Charlie Frank Robertson. And you need to understand, I think, that is what the hearing is all about. You've got to find that the basis of the claim is common to all of these thousands of people.

THE COURT: Okay. Well, you know I've got to know what the basis of the claim is.

MR. JAMES: Yes, sir.

THE COURT: The basis of the claim, as I understand from the plaintiff, this is not something that Ronnie Peel did, it is something that Liberty National in Birmingham did or wherever they made the decision to do that - that they intended to exchange these policies, as many as they could, because they were defrauding the people with intent to defraud the people to exchange the policies to give them one that would pay them less rather than one that they had that was paying more.

MR. JAMES: But, that is something that needs to be presented to your Honor to form a basis of your findings and conclusions on class certification. I mean, [p. 26] all we have today is a bare pleadings, and an affidavit that he has handed to us at the beginning of the hearing with no opportunity to cross-examine, that they are saying accept everything we tell you is true, Judge.

THE COURT: Wait a minute, I'm going to let you depose these folks. I'm trying to figure out how much further we are going than that. Okay?

MR. JAMES: Okay. We talked about the conditional certification, I think if you look at the cases you will see that doesn't mean you just come in and certify it on day one.

THE COURT: I ain't fixing to do it today.

MR. JAMES: Okay. An issue that ought to be heard by your Honor is whether Robertson has the standing to represent other people that they want to include in the class. Robertson, as I mentioned earlier, based on our records has had no claim earned under the old policy or the new. Now does he have standing to come in and challenge the exchange for somebody who exchanged, and is a lot better off for exchanging, because they get more benefits under the new policy than the old policy? He is exchanging that policy -

THE COURT: (Interposing) Is this Louise Peel's case? Is this the same type case?

MR. MAIN: I'm not familiar.

[p. 27] MR. METHVIN: Yes, that is a cancer exchanged -

THE COURT: And that is one you want -

MR. METHVIN: (Interposing) It's going to settle. It is just filed separately.

MR. JAMES: And Louise Peel, is it alleging she got her own case?

THE COURT: This is one that y'all put in the class.

MR. METHVIN: Probably.

MR. MAIN: Your Honor, may I expound on that just a minute?

The way we expect, and the way the plaintiff's would prefer this to go, would be to have a conditional certification of the general class of people whose policies were switched from an old policy to a new policy with a lesser benefit, and then as the discovery went along the Court would revisit this, if there were sub-classes that needed to be identified and have specific class representatives and dealt with differently such as damages, there may be people who have a lesser valued policy but haven't had cancer and their damages are certainly different than those who have a lesser valued policy and have had cancer. There is a potential for a third group of people if there was an attempt to switch the [p. 28] policy, the policy they did not switch, but that original group has diminished, so that the claims experience -

THE COURT: Is attempted fraud?

MR. MAIN: Sir?

THE COURT: Attempted fraud?

MR. MAIN: Because of the scheme and this policy and procedure their remuneration has gone up four hundred percent.

I would point out to the court, we just did file the affidavit and the other court has not had an opportunity to read them, but one of these affidavits, Robert Stewart was president of Liberty National until 1986, and he was then a senior vice-chairman of *Torchmark*, and the other one was a regional vice-president of Liberty until 1990, and both of them have described this policy or Procedure for switching old for new with diminished benefits. There is no evidentiary hearing needed for the determination of the initial class certifications for conditional fraud class in our judgment. And it sounds like they want to litigate the merits.

THE COURT: That is what it sounds like to me, and I'm not going to allow that.

MR. JAMES: Well, I'm not suggesting you litigate the merits.

THE COURT: Okay. I'll continue this hearing. [p. 29] How long can you all - I'll let you take the depositions - these three depositions that you wanted to take. Okay?

MR. JAMES: Okay.

THE COURT: Can we get this done in the next ten days or two weeks?

MR. MAIN: Your Honor, Miller and Stewart, we will have to - we do - they are not named plaintiffs, and we don't have total control over them coming to court like we would our own client.

THE COURT: Well, you can notice -

MR. JAMES: We can send them a subpoena.

MR. MAIN: We will work with them to try to get it within ten days to two weeks.

THE COURT: Well, if you want to notice them and subpoena them and all that it is going to take longer. Why don't y'all see what days you can take them and set a date and come back here and I'll let you put on what you want to put on.

MR. JAMES: That is fine.

MR. WILLIAMS: That is basically what we wanted, your Honor, thank you.

THE COURT: Horace, I knew what you wanted to start with, and I was going to try to agitate you because you are such a nice fellow.

MR. WILLIAMS: Thank you, Judge.

[p. 30] (THEREUPON, court stood adjourned.)

* * *

MONDAY, MARCH 8, 1993. 1:05 P.M.

WHEREUPON, the following proceedings were had and entered of record as follows, to-wit:

MR. BEASLEY: Judge, we are submitting our class certification on the matters that were taken up at the last hearing, and the matters presented at that time including all the affidavits that were filed by the plaintiff. And we would ask that the class be certified today based

on that record. And the class that we are asking - I'll just read what we feel is the class. "All the past and present insureds under cancer policy issued by the Liberty National Life Insurance Company, providing unlimited coverage for radiation, chemotherapy, and out of hospital prescription drugs, which coverage was effective on or after August 29, 1986, the date that Liberty National offered new replacement cancer policies limiting coverage for radiation, chemotherapy, and out-of-hospital prescription drugs," which we refer to as the new policy, "excluding from the certified class any insured, who, on or before the date of this class certification request, has filed a separate action against Liberty National asserting claims arising out of the cancer policies on coverage."

And we would ask that the class be certified [p. 31] under Rule 23(b)(2) of the Alabama Rules of Civil Procedure.

MR. GEWIN: I think the court is familiar with our position in opposition to the motion to certify. The court was gracious enough to permit us to take the depositions of Mr. Miller, who has also given an affidavit, a Mr. Stewart who has given an affidavit, and Charlie Frank Robertson. And we would submit our depositions in opposition, a copy of those, if it is not on file, it will be shortly.

THE COURT: All right. I'll take it under submission. Is that all we can do today?

MR. BEASLEY: Yes.

THE COURT: Thank you very much.

(THEREUPON, court was adjourned.)

* * *

[p. 32] IN THE CIRCUIT COURT WITHIN AND FOR
THE COUNTY OF BARBOUR
STATE OF ALABAMA

CHARLIE FRANK ROBERTSON,]	
]	
PLAINTIFF,]	
]	
VS.	]	<u>CIVIL ACTION</u>
	]	<u>NO. CC-92-021</u>
LIBERTY NATIONAL LIFE]	
INSURANCE COMPANY,]	
]	
DEFENDANT.]	

REPORTER'S CERTIFICATE OF COMPLETION

I, ANDREW J. CLINGAN, JR., RPR, CCR, Official Court Reporter for the Third Judicial Circuit of Alabama, do hereby certify that I have this date completed the original of a true and correct transcript of the notes of the evidence and matters [sic] taken by me in the foregoing cause on the dates herein before stated by means of Computer-Assisted Transcription by CIMMARON as designated by counsel for the Plaintiff. All pages are numbered serially in the top right-hand corner, and ending with the page number appearing at the top of this certificate.

Dated this the 23rd day of April, 1993.

/s/ Andrew J. Clingan, Jr.
Andrew J. Clingan, Jr.

IN THE CIRCUIT COURT FOR
BARBOUR COUNTY, ALABAMA
Clayton Division

CHARLIE FRANK ROBERTSON,	*	
for himself, and in his	*	
representative capacity for the	*	Case Number:
class of persons described	*	CV-92-021
herein,	*	
	*	
	*	Plaintiff,
	*	
vs.	*	
	*	
LIBERTY NATIONAL LIFE	*	
INSURANCE COMPANY,	*	
	*	
	*	Defendant.

ORDER SETTING HEARING

Plaintiff's motion for an Order to Certify this Action as a Class Action, having been filed previously, set once, and continued by the Court due to representations by counsel for Defendant that this action and other related cases were to be settled, and the Court, having been advised that no settlement was reached, is of the opinion that a hearing is needed. It is therefore Ordered, pursuant to Rule 23, A.R.Civ.P., that a hearing for class certification be held on the 8th day of March, 1993 at 9:00 a.m. at the Courthouse in Clayton, Alabama.

The Clerk shall give notice of the hearing to all counsel of record.

DATED: January 29, 1993.

/s/ William H. Robertson
CIRCUIT JUDGE

Jere L. Beasley
 Walter R. Byars
 Horace G. Williams
 Donald M. James
 Brittin T. Coleman

**IN THE CIRCUIT COURT FOR
 BARBOUR COUNTY, ALABAMA
 Clayton Division**

JAMES L. GOULD and
 DOROTHY N. GOULD,

Plaintiffs,

vs.

LIBERTY NATIONAL LIFE
 INSURANCE COMPANY,

Defendant.

•
 •
 •
 •
 • Case Number:
 • CV-93-024
 •
 •

COMPLAINT

(Filed March 8, 1993)

Statement of the Parties

1. Plaintiffs are each over the age of 19 years and reside at Route 1, Box 69, Clopton, Alabama.

2. Defendant is a domestic corporation with its principal place of business located in Birmingham, Jefferson County, Alabama. Said Defendant does business by agent in Barbour County, Alabama.

Statement of the Facts

3. In 1979, Plaintiffs were the owners of a family cancer policy issued by Defendant.

4. On or about the 12th day of March, 1979, Plaintiff James L. Gould took out another cancer policy issued by Defendant.

5. Defendant subsequently contacted Plaintiffs and represented to them that Defendant had a superior policy

with better coverage available and that Plaintiffs should switch over to this new policy.

6. Plaintiffs, in reliance upon the representations, dropped their old policies and took out the proposed policy with Defendant.

COUNT ONE

7. Plaintiffs reallege paragraphs 1 through 6 of the complaint as if set out here in full.

8. The representations by Defendant were false and Defendant knew that they were false.

9. Plaintiffs relied upon the representations, as aforesaid.

10. As a proximate consequence of the fraudulent representations by Defendant, Plaintiffs were injured and damaged as follows: they dropped a superior policy of insurance and now have a policy that gives them less total coverage than before; they suffered mental pain and anguish and continue to do so; and they have been otherwise injured and damaged.

WHEREFORE, Plaintiffs demand judgment against Defendant in such amount of compensatory damages as may be awarded by a jury; a separate amount of punitive damages; and their costs.

/s/ Jere L Beasley
JERE L. BEASLEY,
Attorney for Plaintiffs

OF COUNSEL:

BEASLEY, WILSON, ALLEN,
MAIN & CROW, P.C.
Post Office Box 4160
Montgomery, AL 36103-4160
(205) 269-2343

JURY DEMAND

PLAINTIFFS HEREBY DEMAND TRIAL BY JURY
ON ALL ISSUES OF THIS CAUSE.

/s/ Jere L Beasley
OF COUNSEL

**IN THE CIRCUIT COURT FOR
BARBOUR COUNTY, ALABAMA
Clayton Division**

ROBERT I. STEWART; JOHN W.	*	
MILLER; and DAN T. HEAD;	*	
	*	
Plaintiffs,	*	
	*	
vs.	*	Case Number:
	*	CV-93-025
LIBERTY NATIONAL LIFE	*	
INSURANCE COMPANY,	*	
	*	
Defendant.	*	

COMPLAINT

(Filed March 10, 1993)

Statement of the Parties

1. Plaintiffs are each over the age of 19 years and reside in the State of Alabama.

2. Defendant is a domestic corporation with its principal place of business located in Birmingham, Jefferson County, Alabama. Said Defendant does business by agent in Barbour County, Alabama.

Statement of the Facts

3. Plaintiff Robert I. Stewart was the owner of a cancer policy or policies issued by Defendant.

4. Plaintiff John W. Miller was the owner of a cancer policy or policies issued by Defendant.

5. Plaintiff Dan T. Head was the owner of a cancer policy or policies issued by Defendant.

6. Defendant subsequently contacted Plaintiffs and represented to them that Defendant had a superior policy with better coverage available and that Plaintiffs should switch over to this new policy.

7. Plaintiffs had each worked for Defendant in the past and had complete confidence that the representations were true and correct.

8. Plaintiff John W. Miller, in reliance upon the representations, dropped his old policy and each took out the proposed new policy with Defendant.

9. Plaintiffs Robert I. Stewart and Dan T. Head kept their old policies.

COUNT ONE

10. Plaintiff Robert I. Stewart realleges paragraphs 1 through 6 of the complaint as if set out here in full.

11. The representations by Defendant were false and Defendant knew that they were false.

12. Plaintiff relied upon the representations, as aforesaid.

13. As a proximate consequence of the fraudulent representations by Defendant, Plaintiff was injured and damaged as follows: he was forced to pay artificially high premiums on the policy he kept because so many policyholders switched to the new policy; he suffered mental pain and anguish and continues to do so; and he has been otherwise injured and damaged.

WHEREFORE, Plaintiff Robert I. Stewart demands judgment against Defendant in such amount of compensatory damages as may be awarded by a jury; a separate amount of punitive damages; and his costs.

COUNT TWO

14. Plaintiff John W. Miller realleges paragraphs 1 through 9 of the complaint as if set out here in full.

15. The representations by Defendant were false and Defendant knew that they were false.

16. Plaintiff relied upon the representations, as aforesaid.

17. When Plaintiff later learned of the gross fraud involved, he dropped his coverage even though he had previously had cancer.

18. As a proximate consequence of the fraudulent representations by Defendant, Plaintiff was injured and damaged as follows: he lost the benefits of his original policy; he suffered mental pain and anguish and continues to do so; and he has been otherwise injured and damaged.

WHEREFORE, Plaintiff John W. Miller demands judgment against Defendant in such amount of compensatory damages as may be awarded by a jury; a separate amount of punitive damages; and his costs.

COUNT THREE

19. Plaintiff Dan T. Head realleges paragraphs 1 through 9 of the complaint as if set out here in full.

20. The representations by Defendant were false and Defendant knew that they were false.

21. Plaintiff relied upon the representations, as aforesaid.

22. As a proximate consequence of the fraudulent representations by Defendant, Plaintiff was injured and damaged as follows: he dropped a superior policy of insurance and now has a policy that gives him less total coverage than before; he suffered mental pain and anguish and continues to do so; and he has been otherwise injured and damaged.

WHEREFORE, Plaintiff Dan T. Head demands judgment against Defendant in such amount of compensatory damages as may be awarded by a jury; a separate amount of punitive damages; and his costs.

/s/ Jere L. Beasley
JERE L. BEASLEY,
Attorney for Plaintiffs

OF COUNSEL:

BEASLEY, WILSON, ALLEN,
MAIN & CROW, P.C.
Post Office Box 4160
Montgomery, AL 36103-4160
(205) 269-2343

JURY DEMAND

PLAINTIFFS HEREBY DEMAND TRIAL BY JURY
ON ALL ISSUES OF THIS CAUSE.

/s/ Jere L. Beasley
OF COUNSEL

**IN THE CIRCUIT COURT FOR
BARBOUR COUNTY, ALABAMA**

ROBERT I. STEWART, JOHN W.))	
MILLER, and DAN T. HEAD,)	
Plaintiffs,)	
vs.	)	CIVIL ACTION
LIBERTY NATIONAL LIFE	)	CV-93-025
INSURANCE COMPANY,)	
Defendant.)	

**JOINT MOTION FOR AND STIPULATION OF
DISMISSAL WITHOUT PREJUDICE**

COME NOW the Plaintiffs Robert I. Stewart, John W. Miller, and Dan T. Head, and the Defendant Liberty National Life Insurance Company, and hereby jointly stipulate that the above-captioned matter is due to be dismissed, without prejudice, each party to bear its own costs.

/s/ Robert I. Stewart
Robert I. Stewart,
Plaintiff

/s/ John W. Miller
John W. Miller,
Plaintiff

/s/ Dan T. Head
Dan T. Head, Plaintiff

/s/ James Allen Main
James Allen Main
Jere L. Beasley
Attorneys for
Plaintiffs
Robert I. Stewart,
John W. Miller, and
Dan T. Head

OF COUNSEL:

BEASLEY, WILSON,
ALLEN,
MAIN & CROW, P.C.
P.O. Box 4160
Montgomery, Alabama
36103-4160
(205) 269-2343

OF COUNSEL:

STEINER, CRUM & BAKER
8th Floor, 8 Commerce Street
Post Office Box 668
Montgomery, Alabama 36101-0668
Phone: (205) 832-8989

/s/ James W. Gewin
James W. Gewin

/s/ Michael R. Pennington
Michael R. Pennington
Attorneys for Defendant
Liberty National Life Insurance
Company

OF COUNSEL:

BRADLEY, ARANT, ROSE & WHITE
1400 Park Place Tower
Birmingham, Alabama 35203
Phone: (205) 521-8000

**IN THE CIRCUIT COURT FOR
BARBOUR COUNTY, ALABAMA**

ROBERT I. STEWART, JOHN W.))	
MILLER, and DAN T. HEAD,)	
Plaintiffs,)	
vs.	)	CIVIL ACTION
LIBERTY NATIONAL LIFE	)	CV-93-025
INSURANCE COMPANY,)	
Defendant.)	

ORDER

The parties to the above-styled action, having filed a Joint Motion for and Stipulation of Dismissal Without Prejudice, each party to bear its own costs.

NOW, THEREFORE, it is hereby ORDERED, ADJUDGED, & DECREED this action being the same is hereby dismissed without prejudice, each party to bear its own costs.

7-19-93

/s/ W. H. Robertson
Circuit Judge

**IN THE CIRCUIT COURT FOR
BARBOUR COUNTY, ALABAMA
Clayton Division**

CHARLIE FRANK ROBERTSON, *	*	
for himself, and in his	*	
representative capacity for the	*	Case Number:
class of persons described	*	CV-92-021
herein,	*	
	*	
Plaintiff,	*	
vs.	*	
LIBERTY NATIONAL LIFE	*	
INSURANCE COMPANY,	*	
Defendant.	*	

ORDER CERTIFYING CLASS

(Filed March 10, 1993)

Having considered the evidence and law presented by the parties to this cause, it is, subject to alteration or amendment under Alabama Rules of Civil Procedure 23(c), ORDERED by the Court as follows:

1. *Class Certification.*

Civil Action No. CV-92-021 shall be maintained as an *Alabama Rules of Civil Procedure* 23(b)(2) class action on behalf of the following class of Plaintiffs:

All past and present insureds under cancer policies issued by Liberty National Life Insurance Company ("Liberty National") providing unlimited coverage for radiation, chemotherapy, and out of hospital prescription drugs ("old policy"), which coverage was effective on or after August 29, 1986, the date that Liberty National offered

new replacement cancer policies limiting coverage for radiation, chemotherapy, and out of hospital prescription drugs ("new policy"), excluding from the certified class any insured, who, on or before the date of this class certification order, has filed a separate action against Liberty National asserting claims arising out of the cancer policies on coverage.

with respect to the following causes of action:

- a. Claims by Plaintiffs for declaratory relief, particularly: (1) the declaration that the Plaintiffs' prior cancer policies entitled them to substantially greater coverage for radiation and chemotherapy treatment, as well as drug payments; (2) that Plaintiffs are entitled to be paid pursuant to their prior cancer policies' provisions for radiation and chemotherapy treatment, and drug payments; (3) claims that Liberty National Life Insurance Company fraudulently, willfully, or wantonly switched the cancer policies as described in Plaintiffs' Amended Complaint.
- b. Claims by Plaintiffs for injunctive relief to prospectively prevent Liberty National Life Insurance Company from continuing to switch cancer policies under the pretext that the new policies are superior to the old policies;

2. *Class Representatives; Class Counsel.* Charlie Frank Robertson is designated class representative for the class. Jere L. Beasley, Frank M. Wilson, James Allen Main, and Walter R. Byars are designated as counsel for the class.

DATED: March 10, 1993.

/s/ William H. Robertson
WILLIAM H. ROBERTSON
CIRCUIT JUDGE

IN THE CIRCUIT COURT FOR
BARBOUR COUNTY, ALABAMA
Clayton Division

CHARLIE FRANK ROBERTSON, *	*	
for himself, and in his	*	
representative capacity for the	*	Case Number:
class of persons described	*	CV-92-021
herein,	*	
	*	
Plaintiff,	*	
	*	
vs.	*	
	*	
LIBERTY NATIONAL LIFE	*	
INSURANCE COMPANY,	*	
	*	
Defendant.	*	

ORDER

(Filed March 10, 1993)

This matter coming on to be heard with respect to the allegations contained in Counts One and Two of the Plaintiff's complaint, the Court hereby finds that Counts One and Two of the complaint are due to be and the same are hereby dismissed, with prejudice.

This Order shall not effect the pendency of the remaining Counts (Three and Four).

DONE and ordered this 10th day of March, 1993.

/s/ William H. Robertson
WILLIAM H. ROBERTSON
CIRCUIT JUDGE

IN THE CIRCUIT COURT FOR
BARBOUR COUNTY, ALABAMA
Clayton Division

CHARLIE FRANK	§	
ROBERTSON, for himself,	§	
and in his	§	
representative capacity	§	Case Number:
for the class of persons	§	CV-92-021
described herein,	§	
	§	<u>ORAL ARGUMENT</u>
Plaintiff,	§	<u>REQUESTED</u>
	§	
vs.	§	BY <u>M. Kathleen</u>
	§	<u>Miller</u>
LIBERTY NATIONAL LIFE	§	
INSURANCE COMPANY,	§	
	§	
Defendant.	§	

MOTION FOR LEAVE TO INTERVENE

(Filed April 30, 1993)

Come now Willard C. Griffith, Sara E. Griffith, Dawn R. Tubb, Edith E. Fellows, Edna F. Brock, Guy Adams, Alice S. Adams, Johnny L. Fellows, Floyd E. Nelson, Delores H. Nelson, Arnold F. Pitt and Almitta Pitt, who are Plaintiffs in certain civil actions filed in the Circuit Court of Mobile County ("Intervenors"), and, on their own behalf and on behalf of other Plaintiffs in Mobile County who have claims against Defendant Liberty National Life Insurance Company but have not yet filed their cases in the Circuit Court of Mobile County, move the Court pursuant to Rule 23(d) of the Alabama Rules of Civil Procedure for leave to intervene in this action for the purpose of moving the Court to amend its order

certifying a class as is set forth in Intervenor's motion to amend order certifying class filed on even date herewith.

ARMBRECHT, JACKSON, DeMOUY,
CROWE, HOLMES & REEVES
Post Office Box 290
Mobile, Alabama 36601
(205) 432-6751

By: /s/ W. Boyd Reeves / MKM
W. Boyd Reeves

By: /s/ Norman E. Waldrop Jr. / MKM
Norman E. Waldrop, Jr.

By: /s/ M. Kathleen Miller
M. Kathleen Miller

CERTIFICATE OF SERVICE

I hereby certify that I have on this the 29th day of April, 1993 served a copy of the foregoing pleading on

Jere L. Beasley, Esq.
Beasley, Wilson, Allen, Main & Crow, P.C.
Post Office Box 4160
Montgomery, AL 36103-4160

Walter R. Byars, Esq.
Steiner, Crum & Baker
Post Office Box 668
Montgomery, AL 36101-0668

James W. Gewin, Esq.
Bradley, Arant, Rose & White
1400 Park Place Tower
2001 Park Place
Birmingham, AL 35203

Horace G. Williams, Esq.
Post Office Box 896
Eufaula, AL 36072-0896

by mailing the same by United States mail properly addressed and first class postage prepaid.

/s/ M Kathleen Miller

IN THE CIRCUIT COURT FOR
BARBOUR COUNTY, ALABAMA
Clayton Division

CHARLIE FRANK :
ROBERTSON, for himself, and: :
in his representative capacity :
for the class of persons : CASE NO. CV-92-021
described herein, :
Plaintiff, : **ORAL ARGUMENT**
 : **REQUESTED**
vs. : **BY /s/ Bill Roedder**
LIBERTY NATIONAL LIFE :
INSURANCE COMPANY, :
Defendant. :

MOTION FOR LEAVE TO INTERVENE

(Filed June 14, 1993)

Come now Eunice W. Long, Marsha N. Britton, and Jewel N. Jones, who are Plaintiffs in certain civil actions filed in the Circuit Court of Mobile County, Alabama ("Intervenors"), and move the Court pursuant to Rule 23(d) and Rule 24 of the Alabama Rules of Civil Procedure for leave to intervene in this action for the purpose of moving the Court to: (1) grant Intervenors the right to conduct certain discovery necessary for a hearing on Intervenors' Petition; (2) reconsider its order of March 10, 1993, certifying a class action under Rule 23(b)(2) of the Alabama Rules of Civil Procedure; and (3) upon reconsidering said order, to modify, amend, or vacate its order certifying a class as is set forth more fully in the Intervention Petition filed herewith.

As grounds for this motion, Intervenors show the Court that they have an interest relating to the transaction which is the subject of this action and that they are so situated that the disposition of the action may as a practical matter, impair or impede their ability to protect those interests. Intervenors further show that their interest is not adequately represented by the existing parties.

/s/ Bill Roedder
William C. Roedder, Jr.
W. Alexander Moseley
Attorneys for Intervenors

Of Counsel:

HAND, ARENDALL, BEDSOLE, GREAVES &
JOHNSTON
Post Office Box 123
Mobile, Alabama 36601
(205) 432-5511

CERTIFICATE OF SERVICE

I do hereby certify that I have, on this 10th day of June, 1993, served a copy of the foregoing pleading on counsel of record for all parties to this proceeding, by placing same in the United States mail, properly addressed and first class postage prepaid.

/s/ Bill Roedder

Counsel of Record:

Jere L. Beasley, Esq.
Beasley, Wilson, Allen,
Main & Crow, P.C.
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1400 Park Place Tower
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Horace G. Williams, Esq.
Post Office Box 896
Eufaula, AL 36072-0896

W. Boyd Reeves, Esq.
Norman E. Waldrop, Jr., Esq.
M. Kathleen Miller, Esq.
Armbrecht, Jackson, Demouy,
Crowe, Holmes & Reeves
Post Office Box 290
Mobile, AL 36601

IN THE CIRCUIT COURT FOR
BARBOUR COUNTY, ALABAMA
Clayton Division

CHARLIE FRANK	:	
ROBERTSON, for himself, and	:	
in his representative capacity	:	
for the class of persons	:	CASE NO. CV-92-021
described herein,	:	
	:	
Plaintiff,	:	
	:	
vs.	:	
	:	
LIBERTY NATIONAL LIFE	:	
INSURANCE COMPANY,	:	
	:	
Defendant.	:	

INTERVENTION PETITION

(Filed June 14, 1993)

Come now Eunice W. Long, Marsha N. Britton, and Jewel N. Jones ("Intervenors"), and file this their Intervention Petition. Intervenors herein seek the following relief: (1) Intervenors seek the right to conduct certain discovery necessary for a hearing on their petition; (2) a reconsideration by this Court of its order of March 10, 1993, certifying a class action under Rule 23(b)(2) of the Alabama Rules of Civil Procedure; and (3) upon reconsidering said order, Intervenors seek modification, amendment, or vacation by the Court of its order certifying a class.

Intervenors seek the following regarding modification, amendment, or vacation of the said order: (A) modification of the order so as (i) to add a provision to allow Intervenors to opt out of the class, and (ii) to further

provide that the findings, ruling, verdict, judgment, and other proceedings conducted in this action in the Circuit Court of Barbour County, will have no affect [sic] on and will not be binding on Intervenor and that neither they nor Liberty National will be bound, estopped or precluded in any manner (including the doctrines of res judicata and collateral estoppel) from fully and fairly litigating their claims in the actions they have filed in the Circuit Court of Mobile County, Alabama; (B) amendment of the said order so as (i) to certify a class under Rule 23(b)(3) rather than Rule 23(b)(2), and (ii) to further provide that the findings, ruling, verdict, judgment, and other proceedings conducted in this action in the Circuit Court of Barbour County, will have no affect [sic] on and will not be binding on Intervenor and that neither they nor Liberty National will be bound, estopped or precluded in any manner (including the doctrines of res judicata and collateral estoppel) from fully and fairly litigating their claims in the actions they have filed in the Circuit Court of Mobile County, Alabama; or (C) vacation of said order and decertification of the class.

A.

Intervenor move the Court to modify the order certifying a class so as to add a provision to allow Intervenor to opt out of the class on the following grounds:

1. Intervenor have suits pending against Liberty National and others in the Circuit Court of Mobile County, Alabama in which they seek monetary damages for fraud and misrepresentation, among other causes of actions.

2. Intervenor wish to and have in fact exercised their rights to pursue their independent suits for damages against Liberty National before a jury in the Circuit Court of Mobile County, Alabama.

3. Intervenor are represented by Mobile counsel, William C. Roedder, Jr. and W. Alexander Moseley, Hand, Arendall, Bedsole, Greaves & Johnston, Post Office Box 123, Mobile, Alabama 36601.

4. Pursuance of the Intervenor's claims in the Circuit Court of Barbour County would not be convenient for the parties or the witnesses, and would not be in the interest of justice. All of the Intervenor reside in Mobile County, Alabama; the individual defendants in the pending suits in Mobile County are, upon information and belief, residents of Mobile County; the company defendant in the Mobile County law suits does business in Mobile County; and the insurance policies in question were marketed and delivered to Intervenor in Mobile County by Liberty National agents working in Mobile County.

5. Intervenor are seeking monetary damages as opposed to declaratory and injunctive relief in the Mobile County, Alabama law suits. The class certification order of March 10, 1993, certifies the class for causes of action that seek exclusively declaratory and injunctive relief.

6. Forcing the Intervenor to litigate their claims under the class certified in the Circuit Court of Barbour County unconstitutionally denies the Intervenor the right to pursue their individual claims in the Circuit Court of Mobile County, Alabama.

B.

In the Alternative, Intervenor move the Court to amend its order certifying this action as a 23(b)(2) class action so as to convert it to a 23(b)(3) class action on the following grounds:

1. A class action that meets the requirements of Rule 23(b)(2) will also meet the less severe requirements of Rule 23(b)(3).

2. The individual members in the class action have a strong interest in controlling their own litigation. Rule 23(c)(2)(A) of the Alabama Rules of Civil Procedure provides an option for members of a class action certified under Rule 23(b)(3) to be excluded from the proceeding and thereby avoid being bound by a judgment against the class. Intervenor wish to and will exercise that option if the class is converted to a Rule 23(b)(3) class and they are found to be members of the class.

3. Separate litigation has already been commenced by many individuals who may be construed to be members of the class.

4. The Circuit Court of Barbour County is not a convenient forum for the Intervenor and is not the forum they would have chosen to litigate their claims against Liberty National.

5. Substantial difficulties are likely to arise in the management of the class action.

6. The representative party in the class action seeks predominately monetary relief in his amended complaint rather than injunctive and declaratory relief. Accordingly,

the class should be certified, if at all, under Rule 23(b)(3), not Rule 23(b)(2).

7. Forcing the Intervenor to litigate their claims under the class certified in the Circuit Court of Barbour County unconstitutionally denies the Intervenor the right to pursue their individual claims in the Circuit Court of Mobile County, Alabama.

C.

In the alternative, Intervenor move the Court to vacate its order and decertify the class on the following grounds:

1. The purported class is not so composed as to be appropriate for class action treatment.

2. The questions of law and fact are not common to the members of the purported class.

3. The claims or defenses of the representative party are not typical of the claims and defense of the purported class.

4. The representative party will not fairly and adequately protect the interests of the purported class.

5. The prosecution of separate actions by individual members of the purported class will not create a risk of inconsistent or varying adjudications with respect to individual members of the purported class that will establish incompatible standards of conduct for the party opposing the purported class.

6. The prosecution of separate actions by individual members of the purported class will not create a risk of

adjudications with respect to individual members of the class that will be dispositive of the interests of the other members not parties to the adjudications nor will it substantially impair or impede their ability to protect their interests.

7. A class action is not a superior method for the fair and efficient adjudication of the controversy.

8. The individual members in the class action have a strong interest in controlling their own litigation.

9. Separate litigation has already been commenced by many individuals who may be construed to be members of the class.

10. The Circuit Court of Barbour County is not a convenient forum for the Interventors and is not the forum they would have chosen to litigate their claims against Liberty National.

11. Substantial difficulties are likely to arise in the management of the class action.

12. Forcing the Intervenor to litigate their claims under the class certified in the Circuit Court of Barbour County unconstitutionally denies the Intervenor the right to pursue their individual claims in the Circuit Court of Mobile County, Alabama.

/s/ Bill Roedder
William C. Roedder, Jr.
 W. Alexander Moseley
 Attorneys for
 Intervenor

Of Counsel:

HAND, ARENDALL, BEDSOLE,
 GREAVES & JOHNSTON
 Post Office Box 123
 Mobile, Alabama 36601
 (205) 432-5511

CERTIFICATE OF SERVICE

I do hereby certify that I have, on this 10th day of June, 1993, served a copy of the foregoing pleading on counsel of record for all parties to this proceeding, by placing same in the United States mail, properly addressed and first class postage prepaid.

/s/ Bill Roedder

Counsel of Record:

Jere L. Beasley, Esq.
 Beasley, Wilson, Allen,
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W. Boyd Reeves, Esq.
 Norman E. Waldrop, Jr., Esq.
 M. Kathleen Miller, Esq.
 Armbrecht, Jackson, Demouy,
 Crowe, Holmes & Reeves
 Post Office Box 290
 Mobile, AL 36601

IN THE CIRCUIT COURT FOR
 BARBOUR COUNTY, ALABAMA
 Clayton Division

CHARLIE FRANK ROBERTSON, *	
for himself, and in his *	
representative capacity for the *	Case Number:
class of persons described *	CV-92-021
herein, *	
	Oral Argument
Plaintiff, *	Requested
vs. *	BY M. Kathleen
	Miller
LIBERTY NATIONAL LIFE *	
INSURANCE COMPANY, *	
Defendant. *	

MOTION TO AMEND ORDER CERTIFYING CLASS

(Filed April 30, 1993)

Come now Intervenor Willard C. Griffith, Sara E. Griffith, Dawn R. Tubb, Edith E. Fellows, Edna F. Brock, Guy Adams, Alice S. Adams, Johnny L. Fellows, Floyd E. Nelson, Delores H. Nelson, Arnold F. Pitt and Almitta Pitt ("Intervenor"), and move the Court to amend its order certifying a class herein, which was entered on March 10, 1993, to add a provision to said order allowing Intervenor and other alleged members of the class certified by the Court to opt out of the class on the following grounds:

1. Intervenor have pending or potential suits against Liberty National in which they seek monetary damages against Liberty National for fraud and misrepresentation, among other causes of action, and Intervenor want to exercise their right to pursue their respective

suits for damages against Liberty National before a jury in the Circuit Court of Mobile County. A copy of a representative complaint filed by one of the Intervenor is attached hereto as Exhibit "A."

2. Intervenor is represented by Mobile counsel, W. Boyd Reeves, Norman E. Waldrop, Jr. and M. Kathleen Miller, Armbricht, Jackson, DeMouy, Crowe, Holmes & Reeves, Post Office Box 290, Mobile, Alabama 36601.

3. All of the Intervenor reside in Mobile County with the exception of Guy Adams and Alice S. Adams, who are former residents of Mobile County. A list of the respective addresses of the Intervenor, which also reflects the civil action numbers of their pending lawsuits, is attached hereto as Exhibit "B."

4. The insurance policies in question were marketed and delivered to Intervenor in Mobile County by Liberty National agents working in Mobile County.

5. Intervenor have named as individual defendants in certain of their pending suits present and/or former agents of Liberty National the majority of whom, upon information and belief, are residents of Mobile County.

6. Intervenor are seeking monetary damages as opposed to equitable and injunctive relief.

ARMBRECHT, JACKSON,
DeMOUY, CROWE, HOLMES
& REEVES
Post Office Box 290
Mobile, Alabama 36601
(205) 432-6751

By: /s/ W. Boyd Reeves - MKM
W. Boyd Reeves

By: /s/ Norman E. Waldrop, Jr. -
MKM
Norman E. Waldrop, Jr.

By: /s/ M. Kathleen Miller
M. Kathleen Miller

CERTIFICATE OF SERVICE

I hereby certify that I have on this the 29th day of April, 1993 served a copy of the foregoing pleading on

Jere L. Beasley, Esq.
Beasley, Wilson, Allen,
Main & Crow, P.C.
Post Office Box 4160
Montgomery, AL 36103-4160

Walter R. Byars, Esq.
Steiner, Crum & Baker
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Montgomery, AL 36101-0668

James W. Gewin, Esq.
Bradley, Arant, Rose & White
1400 Park Place Tower
2001 Park Place
Birmingham, AL 35203

Horace G. Williams, Esq.
Post Office Box 896
Eufaula, AL 36072-0896

by mailing the same by United States mail properly addressed and first class postage prepaid.

/s/ M. Kathleen Miller

Plaintiff,

LIBERTY NATIONAL LIFE
INSURANCE COMPANY;
TORCHMARK CORPORATION;
STEVEN E. MITCHELL, A, B,
and/or C, being those persons,
firms, partnerships, corporations or
other legal entities responsible for
underwriting said policies made
the basis of this suit; D, E, F,
being those persons, firms,
partnerships, corporations or other
legal entities who sold or
participated in the sale of said
policies made the basis of this
suit; G, H, I, being those persons,
firms, partnerships, corporations or
other legal entities who were
responsible for and/or did in fact
assist or contribute in any way to
the fraud or suppression
perpetrated against the Plaintiff;

Defendants.

COMPLAINT

(Filed April 7, 1993)

Comes now the Plaintiff in the above-styled cause, Edna F. Brock, and for her claims against Defendants, Liberty National Life Insurance Company, Torchmark

[Exhibit A]

**CIVIL ACTION
NO.
CV-93-001048
DEMAND FOR
JURY TRIAL**

1. Plaintiff, Edna F. Brock is, and has been at all times material hereto, a resident citizen of Mobile County, Alabama.

2. Liberty National Life Insurance Company ("Liberty National") is an Alabama corporation and at all material times herein was doing business in Mobile County, Alabama.

3. Torchmark Corporation ("Torchmark") is a corporation with its principal place of business in a state other than Alabama but at all material times herein was doing business in Alabama through Liberty National Life Insurance Company, a wholly owned subsidiary, according to Plaintiff's information and belief.

4. Steven E. Mitchell was a sales agent at the Mobile office of Liberty National and at all material times was a resident citizen of Mobile County, Alabama. At all material times Defendant Steven E. Mitchell acted as an employee, servant or agent of Liberty National, in the line and scope of such employment and/or agency. It is alleged that Liberty National Life Insurance Company is responsible for the acts or actions of Defendant Steven E. Mitchell under the doctrine of *respondet superior*, agency, and/or other doctrines.

5. Defendants fictitiously described as "A" through "I" are otherwise unknown to Plaintiff at this time, or if their identities are known to the Plaintiff at this time, their identity as proper party defendants is not known to the Plaintiff at this time, but their true and correct names

will be substituted by amendment when such information is ascertained. It is alleged that Liberty National is responsible for the actions of fictitious parties "D" through "I" under the doctrine of *respondeat superior*, agency, or other doctrines.

6. In the mid to late 1970s, Plaintiff first purchased a cancer policy from Liberty National. This policy provided certain benefits, including benefits for "radiation therapy and prescribed drugs and medicine used in the treatment of cancer".

7. At the time Plaintiff purchased said cancer policy, Defendants and Defendants' agents represented to the Plaintiff that said cancer policy would cover "100% of all of your cancer treatment". The original cancer policy issued to Plaintiff by Liberty National provided benefits which covered 100% of radiation and chemotherapy treatment, as well as 100% of drugs and medicines used in the treatment of cancer and administered outside of the hospital.

8. Liberty National issued a number of renewal policies to Plaintiff which renewed the coverage afforded by the original cancer policy purchased by Plaintiff. The renewal policies, including, but not limited to policy no. 2544941, afforded coverage for 100% of radiation and chemotherapy treatment, as well as 100% of drugs and medicine used in the treatment of cancer and administered outside the hospital.

9. On December 10, 1986, the Plaintiff was approached by Liberty National sales agent Steven E. Mitchell. Mitchell, in his capacity as an agent for Liberty National, represented to the Plaintiff that Liberty

National had "a new cancer policy" which provided "better benefits" than Plaintiff's existing policy. Mitchell further represented, with respect to the new cancer policy that "all of the benefits under the new policy are much better than the policy you have now."

10. During this meeting, Mitchell, in his capacity as Liberty National's agent, pointed out how certain benefits had been increased under Liberty National's new cancer policy and made reference to the first occurrence benefit which had been added. Mitchell failed to inform the Plaintiff that benefits relating to radiation and chemotherapy, as well as drugs and medicines administered outside of the hospital, were greatly reduced under the new policy.

11. On December 10, 1986, said representations of Liberty National's agent Steven E. Mitchell that all benefits relating to cancer treatment were "better" under the new policy were false and Defendants and Steven E. Mitchell knew they were false at the time said representations were made but made said representations with the intention that the Plaintiff would rely upon them.

12. On December 10, 1986, Plaintiff did indeed rely upon the statements, omissions, and promises made by the Defendants and agreed to pay an increased monthly premium so that Plaintiff could exchange her original cancer policy coverage for a new, allegedly better, cancer policy issued by Liberty National and numbered 27547394. Each monthly payment subsequent to this date constitutes a separate and distinct act of fraud on the part of the Defendants and materially injured and damaged the Plaintiff. Each monthly payment was paid by Plaintiff

in direct reliance upon the false representations, statements, omissions or promises made by said Defendants.

13. Plaintiff only recently discovered the fraudulent conduct of Defendants and the misrepresentations made by the Defendants, including those made by Steven E. Mitchell.

14. Defendants seized upon Plaintiff's lack of knowledge and lack of sophistication in insurance matters as an opportunity to issue new insurance to the Plaintiff which reduced the coverage afforded to Plaintiff and which Plaintiff would not otherwise have purchased without her knowledge and consent.

15. Plaintiff alleges that, in connection with the fraudulent conduct on the part of the Defendants, said Defendants, severally and separately, consciously or deliberately engaged in oppression, fraud, wantonness or malice with regard to the Plaintiff.

16. Defendants are guilty of conduct evincing a pattern or practice of intentional wrongful conduct with respect to said cancer policies.

17. Defendants, Liberty National Life Insurance Corporation, Torchmark Corporation, and "A" through "I", with respect to their respective agents, employees and servants, either:

- a. Knew or should have known of the unfitness of the agents, employees or servants and employed them or continued to employ them, or used their services without proper instruction and with disregard of the rights or financial safety and security of the Plaintiff; and/or

- b. Authorized the wrongful conduct; and/or
- c. Ratified the wrongful conduct; and/or
- d. The acts of said agents, servants or employees were calculated to or did benefit said Defendants without the knowledge or participation of the Plaintiff.

18. As a proximate consequence and result of the fraudulent acts of Defendants, the Plaintiff was injured and damaged in that Plaintiff was made to give up her original cancer policy which provided 100% coverage for radiation and chemotherapy treatment, as well as for drugs and medicines administered outside of the hospital. The Plaintiff has also been injured and damaged as a result of having to pay a greater sum in the form of premiums for coverage which provides greatly reduced benefits. Plaintiff has also incurred great mental pain and anguish and continues to so suffer.

FIRST CAUSE OF ACTION **(Fraud)**

19. Plaintiff adopts and re-alleges paragraphs 1 through 18 as if fully set out herein.

20. Defendants' fraudulent acts constituted intentional misrepresentation, deceit and/or concealment of material facts which Defendants had a duty to disclose to Plaintiff. Defendants' conduct was gross, oppressive and/or malicious and was committed with the intention on the part of the Defendants of thereby depriving Plaintiff of property or legal rights or otherwise causing injury to Plaintiff.

WHEREFORE, Plaintiff demands judgment against Defendants, Liberty National Life Insurance Company, Torchmark Corporation, Steven E. Mitchell and "A" through "I", jointly and severally, for compensatory and punitive damages together with interest and costs of this action.

SECOND CAUSE OF ACTION
(Misrepresentation)

21. Plaintiff adopts and re-alleges paragraphs 1 through 18 above as if fully set out herein.

22. The alleged misrepresentations made by the Defendants, including those made by Steven E. Mitchell, were made either willfully to deceive, or recklessly without knowledge, and were acted on by Plaintiff within the meaning of § 6-5-101, Code of Alabama (1975).

WHEREFORE, Plaintiff demands judgment against Defendants, Liberty National Life Insurance Company, Torchmark Corporation, Steven E. Mitchell and "A" through "I," jointly and severally, for compensatory and punitive damages together with interest and costs of this action.

THIRD CAUSE OF ACTION
(Suppression)

23. Plaintiff adopts and re-alleges paragraphs 1 through 18 above as if fully set out herein.

24. Defendants suppressed material facts which Defendants were obligated to communicate to Plaintiff within the meaning of § 6-5-102, Code of Alabama (1975).

WHEREFORE, Plaintiff demands judgment against Defendants Liberty National Life Insurance Company, Torchmark Corporation, Steven E. Mitchell and "A" through "I," jointly and severally, for compensatory and punitive damages together with interest and costs of this action.

FOURTH CAUSE OF ACTION
(Deceit)

25. Plaintiff adopts and re-alleges paragraphs 1 through 18 above as if fully set out herein.

26. The misrepresentations made by the Defendants, including those made by Steven E. Mitchell, were made willfully to induce Plaintiff to act and Plaintiff acted upon said willful misrepresentations to her injury within the meaning of § 6-5-103, Code of Alabama (1975).

27. Said misrepresentations were made with the knowledge that they were false or, alternatively, were made fraudulently or recklessly with the intention to deceive.

WHEREFORE, Plaintiff demands judgment against Defendants, Liberty National Life Insurance Company, Torchmark Corporation, Steven E. Mitchell and "A" through "I," jointly and severally, for compensatory and punitive damages together with interest and costs of this action.

FIFTH CAUSE OF ACTION
(Fraudulent Deceit)

28. Plaintiff adopts and re-alleges paragraphs 1 through 18 above as if fully set out herein.

29. Defendants willfully deceived Plaintiff with the intent to induce them to alter her position to her injury within the meaning of § 6-5-104, Code of Alabama (1975).

WHEREFORE, Plaintiff demands judgment against Defendants, Liberty National Life Insurance Company, Torchmark Corporation, Steven E. Mitchell and "A" through "I," jointly and severally, for compensatory and punitive damages together with interest and costs of this action.

SIXTH CAUSE OF ACTION
(Twisting)

30. Plaintiff adopts and re-alleges paragraphs 1 through 18 above as if fully set out herein.

31. Defendants' misrepresentations constitute misleading, incomplete comparisons as to the terms, conditions or benefits contained in said cancer policy and were made for the purpose of inducing, or attempting or tending to induce, Plaintiff to exchange or convert her existing insurance policy in violation of § 27-12-6, Code of Alabama (1975).

WHEREFORE, Plaintiff demands judgment against Defendants, Liberty National Life Insurance Company, Torchmark Corporation, Steven E. Mitchell and "A" through "I," jointly and severally, for compensatory and

punitive damages together with interest and costs of this action.

SEVENTH CAUSE OF ACTION
(Negligence)

32. Plaintiff adopts and re-alleges paragraphs 1 through 18 above as if fully set out herein.

33. The acts of the Defendants were negligent in that Defendants deliberately omitted and/or failed to disclose to the Plaintiff the following facts:

- a. The benefits provided in her original cancer policy were being greatly reduced by issuing the new policy;
- b. The Plaintiff's premiums were being increased while her benefits were being reduced.

34. Further, the acts of the Defendants were negligent because the Defendants knew that the cancellation of Plaintiff's original cancer policy and issuance of the replacement policy was without any reasonable or arguable justification, and Defendants' actions were done with the knowledge that harm to the Plaintiff was likely to result from the cancellation of her original cancer insurance policy.

WHEREFORE, Plaintiff demands judgment against all Defendants, Liberty National Insurance Company, Torchmark Corporation, Steven E. Mitchell and "A" through "I", jointly and severally, for compensatory and punitive damages together with interest and costs of this action.

EIGHTH CAUSE OF ACTION
(Wantonness)

35. Plaintiff adopts and re-alleges paragraphs 1 through 18 above as if fully set out herein.

36. The acts of the Defendants were wanton in that Defendants deliberately omitted and/or failed to disclose to the Plaintiff the following facts:

- a. The benefits provided in her original cancer policy were being greatly reduced by issuing the new policy;
- b. The Plaintiff's premiums were being increased while their benefits were being reduced.

37. Further, the acts of the Defendants were wanton because Defendants knew that the cancellation of Plaintiff's original cancer policy and issuance of the replacement policy was without any reasonable or arguable justification.

38. Defendants acted recklessly and/or with a conscious disregard for the rights of the Plaintiff when they issued said replacement policy and said replacement was done with the knowledge that harm to the Plaintiff was likely to result from the cancellation of Plaintiff's original cancer insurance policy.

WHEREFORE, Plaintiff demands judgment against all Defendants, Liberty National Insurance Company, Torchmark Corporation, Steven E. Mitchell and "A" through "I", jointly and severally, for compensatory and punitive damages together with interest and costs of this action.

NINTH CAUSE OF ACTION
(Malice)

39. Plaintiff adopts and re-alleges paragraphs 1 through 18 above as if fully set out herein.

40. The acts of the Defendants were malicious in that Defendants deliberately omitted and/or failed to disclose to the Plaintiff the following facts:

- a. The benefits provided in her original cancer policy were being greatly reduced by issuing the new policy;
- b. The Plaintiff's premiums were being increased while her benefits were being reduced.

41. The acts of the Defendants were malicious because the Defendants knew that the cancellation of Plaintiff's original cancer policy and issuance of the replacement policy was without any reasonable or arguable justification.

42. Defendants' actions were intentional and wrongful and were done without just cause or excuse, with an intent to injure Plaintiff.

WHEREFORE, Plaintiff demands judgment against all Defendants, Liberty National Insurance Company, Torchmark Corporation, Steven E. Mitchell and "A" through "I", jointly and severally, for compensatory and punitive damages together with interest and costs of this action.

TENTH CAUSE OF ACTION
(Oppression)

43. Plaintiff adopts and re-alleges paragraphs 1 through 18 above as if fully set out herein.

44. The acts of the Defendants were oppressive in that Defendants deliberately omitted and/or failed to disclose to the Plaintiff the following facts:

- a. The benefits provided in her original cancer policy were being greatly reduced by issuing the new policy;
- b. The Plaintiff premiums were being increased while her benefits were being reduced.

45. Further, the acts of the Defendants were oppressive because they subjected the Plaintiff to cruel and unjust hardship in conscious disregard of the rights of the Plaintiff.

WHEREFORE, Plaintiff demands judgment against all Defendants, Liberty National Insurance Company, Torchmark Corporation, Steven E. Mitchell and "A" through "I", jointly and severally, for compensatory and punitive damages together with interest and costs of this action.

ELEVENTH CAUSE OF ACTION
(Conspiracy)

46. Plaintiff adopts and re-alleges paragraphs 1 through 18 above as if fully set out herein.

47. The actions of Defendants are part of a preconceived plan, design or conspiracy conceived through Liberty National headquarters and executed through its

regional and local offices whereby Liberty National devised a scheme to trick or otherwise mislead the Plaintiff and other insureds in order to sell their products, to generate higher fees and commissions throughout its agency organizational structure and to reduce its claims exposure by reducing benefits without Plaintiff's knowledge or authorization, and agents were trained in team meetings and sales meetings to do the following:

- a. Change name on policies;
- b. Switch policies from the name of one spouse to the other;
- c. Use overages to save lapses;
- d. Use fraudulent addresses to prevent insureds from receiving information on fraudulent transactions.

WHEREFORE, Plaintiff demands judgment against all Defendants, Liberty National Insurance Company, Torchmark Corporation, Steven E. Mitchell and "A" through "I", jointly and severally, for compensatory and punitive damages together with interest and costs of this action.

TWELFTH CAUSE OF ACTION
(Breach of Contract)

48. Plaintiff adopts and re-alleges paragraphs 1 through 18 above as if fully set out herein.

49. In the mid to late 1970s, Liberty National entered into a contract of insurance with Plaintiff. The contract was written by Liberty National and Liberty

National had total control and discretion as to the language used in said contract.

50. The contract of insurance contained the following provision:

" . . . We do not reserve the right to restrict or limit this policy in any other way while it is in force."

This provision expressly limits Liberty National's right to change or restrict the contract of insurance in any way other than change in premium rates.

51. The actions of Liberty National, by and through their agents, whereby her original cancer policy was cancelled and replaced with a policy providing greatly reduced benefits at a higher cost, constitutes a breach of the contract of insurance under which Plaintiff is the beneficiary.

52. As a proximate consequence and result of the breach of contract by Defendants, Plaintiff was injured and damaged in that the Plaintiff lost the value of her original policy from the time of its conversion to a policy for lesser benefits. Plaintiff has also incurred great mental pain and anguish and continues to so suffer.

WHEREFORE, Plaintiff demands judgment against all Defendants, Liberty National Life Insurance Company, Torchmark Corporation, Steven E. Mitchell and "A" through "I", jointly and severally, for compensatory and

punitive damages together with interest and costs of this action.

ARMBRECHT, JACKSON,
DeMOUY, CROWE, HOLMES
& REEVES

Post Office Box 290
Mobile, Alabama 36601
(205) 432-6751

By: /s/ W. Boyd Reeves
W. Boyd Reeves

By: /s/ Norman E. Waldrop, Jr.
(wbr)
Norman E. Waldrop, Jr.

By: /s/ M. Kathleen Miller (wbr)
M. Kathleen Miller

PLEASE SERVE ALL DEFENDANTS BY CERTIFIED
MAIL AS FOLLOWS:

Liberty National Life Insurance Company
The Corporation Company
60 Commerce Street
Montgomery, Alabama 36103

Torchmark Corporation
The Corporation Company
60 Commerce Street
Montgomery, Alabama 36103

Steven E. Mitchell
Liberty National Life Insurance Company
1361 Springhill Avenue
Mobile, Alabama 36604

Willard C. Griffith, Sara E. Griffith and Dawn R. Tubb 4613 Dauphin Island Parkway Mobile, Alabama 36605	CV-93-001046
Edith E. Fellows 3361 Mildred Street Mobile, Alabama 36605	CV-93-001047
Edna F. Brock 3361 Mildred Street Mobile, Alabama 36605	CV-93-001048
Arnold F. Pitt and Almitta Pitt 3604 York Road Mobile, Alabama 36605	CV-93-001049
Johnny L. Fellows 2455 Robin Hood Drive Mobile, Alabama 36605	CV-93-001050
Guy Adams and Alice S. Adams 31330 Busbee Road Spanish Fort, Alabama 36527	CV-93-001051
Floyd E. Nelson and Delores H. Nelson 9530 I-10 Service Road Irvington, Alabama 36544	CV-93-001052

Exhibit "B"

**IN THE CIRCUIT COURT FOR
BARBOUR COUNTY, ALABAMA
Clayton Division**

CHARLIE FRANK ROBERTSON,	*	
for himself, and in his	*	
representative capacity for the	*	
class of persons described herein,	*	
	*	
Plaintiff,	*	Case Number:
vs.	*	CV-92-021
	*	
LIBERTY NATIONAL LIFE	*	
INSURANCE COMPANY,	*	
	*	
Defendant.	*	

**STIPULATION AND AGREEMENT OF
COMPROMISE AND SETTLEMENT**

(Filed June 16, 1993)

The parties to the above-captioned civil action (the "Litigation"), Charlie Frank Robertson, for himself ("Named Plaintiff") and as Class Representative, and Liberty National Life Insurance Company ("Defendant"), for itself and both by and through their respective attorneys, have entered into the following Stipulation and Agreement of Compromise and Settlement (the "Stipulation" or the "Settlement") subject to the approval of the Court.

DEFINITIONS

The following words or phrases, whenever they appear in this Agreement, shall have the following meaning ascribed to them, and the singular includes the plural, and the plural the singular:

1. "Old Policy" and "Old Cancer Policy" shall mean any cancer insurance policy or policies issued by Liberty National Life Insurance Company ("Liberty National") which (i) contained no monetary limits or exclusions regarding benefits for radiation, chemotherapy, prescription chemotherapy drugs, and other out-of-hospital prescription drugs, and (ii) which was issued prior to August 29, 1986.

2. "New Policy" and "New Cancer Policy" shall mean any cancer insurance policy or policies issued by Liberty National on or after August 29, 1986 which contained monetary limits upon or exclusions of benefits for otherwise covered radiation, chemotherapy, and prescription chemotherapy drugs and provided no benefits or coverage for other out-of-hospital prescription drugs.

3. "Class" shall mean the Class certified by the Barbour County Circuit Court on March 10, 1993 as set forth in recital 11 below and as more fully defined in Section I below.

4. "Named Insured" or "policyholder" shall mean the person listed as "insured" on the face of the policy, and to whom benefits under the policy for the treatment of persons covered under the policy are payable by the terms of the policy.

5. "Covered Persons" shall mean dependents of Named Insured who are covered persons within the meaning of the applicable policy.

6. "Other out-of-hospital prescription drugs" or "other out-of-hospital prescription drugs prescribed in connection with the treatment of cancer" shall mean all

prescription drugs, other than prescription chemotherapy drugs, prescribed for any named insured or covered person with a diagnosis of cancer for use outside of a hospital in the (i) treatment of cancer, or (ii) treatment of the effects of cancer or of cancer treatment.

RECITALS

1. Liberty National is an insurance company which offers, in addition to other insurance products, policies of insurance providing benefits to policyholders and insureds who are diagnosed with cancer.

2. Liberty National had in force, prior to August 29, 1986, certain old cancer policies which, among other benefits, provided benefits payable without monetary limits to named insureds for themselves and other covered persons under the policy for radiation, chemotherapy, prescription chemotherapy drugs, and other out-of-hospital prescription drugs.

3. It is alleged in this action that beginning on or about August 29, 1986, and on other occasions thereafter, Liberty National instituted a program or programs to offer those customers having the old cancer policies the opportunity to replace their old cancer policies then in effect with one of several new cancer policies which contained monetary limits for otherwise covered radiation, chemotherapy and prescription chemotherapy drugs, and eliminated the benefit for other out-of-hospital prescription drugs prescribed in connection with the treatment of cancer (the "alleged cancer policy exchange programs").

4. The new policies also provided certain new or enhanced benefits not provided by the old policy including, but not limited to, the following new benefits under one or more of the "new policy" forms: a "first occurrence" cash benefit payable to the named insured for each insured upon initial diagnosis of cancer; dread disease benefits; hospice benefits; benefits for prostheses; experimental treatment benefits; disability income benefits; and other new or enhanced benefits.

5. As of August 29, 1986, Liberty National discontinued the sale of old policies. Old policies issued prior to that date remained in force for those who already had such policies, but chose not to replace the old policy with the new policy, and continued to pay premiums on the old policy as and when due.

6. Under all old policies and new policies, all benefits payable for the treatment rendered to the named insured or any covered person are payable to the named insured under the policy, or to his assignee.

7. Charlie Frank Robertson ("Robertson"), prior to August 29, 1986, had purchased from Liberty National one of the old cancer policies described in recital 2 above, and was the named insured under said policy. After August 29, 1986, Robertson terminated his old policy and purchased one of the new policies to replace his old policy. Robertson was also the named insured under the new policy. Robertson has not been diagnosed with cancer and has made no claim for benefits under the new policy.

8. Robertson, on behalf of himself and the Class, contends that in the course of implementing the alleged

cancer policy exchange programs, Liberty National misrepresented or failed to disclose material facts and, in particular, misrepresented the benefits afforded by the new policy and specifically failed to disclose the monetary limits imposed by the new policy upon benefits for radiation, chemotherapy and prescription chemotherapy drugs and the elimination of coverage for other out-of-hospital prescription drugs prescribed in connection with the treatment of cancer, and failed to adequately inform policyholders that such coverages were provided without such monetary limits or exclusions (under their old policies).

9. Liberty National vigorously denies the allegations and contends that the new policies provided substantially greater overall coverage than the old policies and that the new policies have paid substantially greater sums in overall benefits to a large majority of those who later were diagnosed with cancer.

10. Robertson filed suit on or about May 12, 1992, against Liberty National initially asserting claims arising from a life insurance policy issued by Liberty National. All claims arising out of or related to the life insurance policy have heretofore been settled in a separate agreement between Robertson and Liberty National which has no bearing on this settlement agreement.

11. On or about October 2, 1992, Robertson (the "Named Plaintiff" and the "Class Representative"), amended his complaint (against Liberty National) to assert on behalf of himself and a purported Class claims arising out of the alleged cancer policy exchange programs.

12. On March 10, 1993, over Liberty National's objection, the Circuit Court of Barbour County (the "Circuit Court" or the "Court") entered a class action certification order pursuant to Rule 23(b)(2), *Alabama Rules of Civil Procedure*, certifying a class consisting of:

"All past and present insureds under cancer policies issued by Liberty National Life Insurance Company ("Liberty National") providing unlimited coverage for radiation, chemotherapy and out-of-hospital prescription drugs ("old policy"), which coverage was effective on or after August 29, 1986, the date that Liberty National offered new replacement cancer policies limiting coverage for radiation, chemotherapy and out-of-hospital prescription drugs ("new policy"), excluding from the certified class any insured, who, on or before the date of this class certification order, has filed a separate action against Liberty National asserting claims arising out of the cancer policies o[r] coverage."

In its Order of March 10, 1993, the Circuit Court reserved the right to modify, clarify, amend or refine the class certification and the definition of the Class.

13. The parties to this Class Action and Litigation thereafter negotiated and now desire to enter into this Agreement to resolve all claims arising out of or related to the alleged cancer policy exchange programs or related to the Released Claims (as defined in Section III below) which have been asserted or could be asserted by or on behalf of the Class or any Class Members on the terms and conditions set forth in this Agreement. The intent and purpose of this Agreement is to effect a fair and reasonable full and final settlement of all actions, claims,

demands, causes of action, and liabilities which may have heretofore been, or may hereafter be, asserted by or on behalf of any person or persons described in said Class arising from or related to the alleged cancer policy exchange programs or to the Released Claims as defined in Section III below.

14. After substantial discovery and after due inquiry deemed by them to be sufficient, counsel for Named Plaintiff and the Class have concluded that a settlement of this Litigation upon the terms and conditions hereof would be in the best interests of the Class considering the totality of the circumstances, including but not limited to the substantial benefits afforded by the settlement to all Class Members; the risks, uncertainty and expense of litigation; the substantial defenses which have been and could be asserted by defendant Liberty National, including but not limited to statutes of limitation defenses (the applicability and merit of such defenses not being conceded by Named Plaintiff, Class Representative, or Class Counsel); the primary need for reformation of the new policies and for other equitable relief for the Class in order to ensure that all Class Members with new policies currently in force and all Class Members who lapsed their old policies after August 29, 1986, (and did not reinstate the old policy) are given the opportunity to maintain coverage against future cancer claims for radiation, chemotherapy, prescription chemotherapy drugs, and for other out-of-hospital prescription drugs all without monetary limits, while at the same time achieving restitution of any past benefits which Class Members may have enjoyed but for the

matters alleged in the complaint; and the other substantial benefits available under the settlement.

15. Liberty National denies all liability with respect to any and all claims alleged in the Litigation or described in this Stipulation, but has entered into this Stipulation so as to: (1) avoid the substantial expense, inconvenience, distraction, uncertainty, and adverse publicity associated with continued litigation; (2) avoid the risks of the Litigation; (3) provide coverage without monetary limits for radiation, chemotherapy, prescription chemotherapy drugs and other out-of-hospital prescription drugs to Class Members under the new cancer policies and thereby preserve the goodwill and loyalty of Liberty National's customers; (4) avoid the burdens of multiple and piecemeal litigation of substantially similar allegations in separate lawsuits in different courts; and (5) eliminate any possibility that any of its Class Members were or could be prejudiced by virtue of having replaced an old policy with a new policy.

NOW, THEREFORE, in consideration of the foregoing and the mutual covenants and conditions herein, and the mutual undertakings of the parties hereto, it is hereby stipulated and agreed, by and among the Named Plaintiff, Class Representative, and Class Counsel on behalf of the Class, and the Defendant Liberty National and its Counsel, that the Litigation should be settled and compromised, subject to approval of the Circuit Court of Barbour County, Alabama, pursuant to Rule 23 of the Alabama Rules of Civil Procedure, according to the following terms and conditions:

THE TERMS OF THE SETTLEMENT

I. Class Action for Settlement Purposes.

The parties agree, solely for the purpose of settlement, that the Litigation shall continue to be maintained as a class action pursuant to Alabama Rule of Civil Procedure ("ARCP") 23(b)(2), but if the Settlement is not approved or otherwise is not consummated, then the Parties retain all rights to oppose continued class action treatment, or to seek decertification of the Class.

The parties stipulate, subject to Court approval, that the Class shall consist of: all persons who now or in the past were insured under any cancer policy which (1) was issued by Liberty National Life Insurance Company ("Liberty National") on or before August 29, 1986, and (2) which provided benefits for radiation, chemotherapy, prescription chemotherapy drugs, and other out-of-hospital prescription drugs without monetary limits, and (3) was paid and in force (or in the grace period) on or after August 29, 1986, regardless of whether such policy remains in force, thereafter lapsed or was replaced by a different Liberty National cancer policy after that date; *provided, however*, that (i) any insured who is or was a named plaintiff in any separate lawsuit which was filed on or before March 10, 1993 and which alleges fraud, concealment, failure to disclose or misrepresentation in connection with the purchase, sale, issuance, exchange or replacement of any one or more Liberty National cancer insurance policies is excluded from the Class *unless* such lawsuit has been voluntarily dismissed without prejudice on or before the date this settlement is finally approved by the Circuit Court of Barbour County, Alabama; (ii) any

insured whose "old policy" lapsed prior to August 29, 1986 and was not thereafter reinstated (after payment by the insured of all delinquent premiums) by Liberty National is excluded from the Class; and (iii) any insured whose first Liberty National cancer policy was a new policy form issued after August 29, 1986 is excluded from the Class.

II. Benefits From and Conditions of Settlement.

1. Settlement of Pending and Potential Actions. All actions, claims, demands, causes of actions, and liabilities which are asserted or which could be asserted by or on behalf of any Class Member in this Litigation relating to the alleged cancer policy exchange programs or the Released Claims (as defined in Section III below) shall be resolved on the terms and conditions hereinafter provided.

2. Settlement Recommended by Class Counsel. Class Counsel cannot bind the Class Members to the terms of this settlement without court approval, but Class Counsel and each of them shall recommend the settlement for approval and enforcement by the Court and shall support the fairness, adequacy, and binding effect of the settlement as to each Class Member in the event of any appeal or other challenge thereto.

3. Court Approval. All the transactions and undertakings herein are subject to approval by the Court and entry of a final judgment in accordance with Rule 54(b) of the Alabama Rules of Civil Procedure substantially in the form of the proposed order attached as Exhibit D, which: (i) approves the final certification of the Class described

in Section I above; (ii) enters a final injunction and other declaratory and equitable relief permanently enjoining and requiring Liberty National to perform its obligations (including reformation of the new policies, ancillary restitution and the ancillary monetary relief) set forth in this Settlement Agreement (the "Injunction"), and subject to said Injunction and the right to enforcement thereof pursuant to the continuing jurisdiction reserved by the Court, approves the release of and dismisses with prejudice all claims asserted or which could have been asserted in this Litigation by or on behalf of the Class Members or any of them relating to the alleged cancer policy exchange programs or to the Released Claims as defined in Section III below; (iii) bars and enjoins each and all Class Members from filing, pursuing, continuing, or participating as a litigant in any separate individual lawsuit or separate class action relating to the alleged cancer exchange programs or the Released Claims (as defined in Section III below); (iv) ratifies the terms of the escrow agreement attached hereto as Exhibit E, (v) establishes an administrative procedure for consideration of claims to be submitted by Class Members pursuant to paragraph II-11 of this agreement and approves the proof of claim form attached hereto as Exhibit C; (vi) designates a bar date on or before which proofs of claims shall be submitted as designated in the administrative procedure; and (vii) reserves jurisdiction over all matters related to the administration, consummation, interpretation, and enforcement of the Stipulation and Settlement. This settlement is further conditioned on final affirmance and approval by each appellate court, in which any appeal or other petition for review is filed, of all aspects of this

settlement and the circuit court's Final Judgment and other orders contemplated hereby, if any appeal is taken from any such orders or judgments.

4. Cash Payments to Be Made in Escrow. Subject to the provisions of paragraph II-3, all fixed dollar settlement funds and the maximum amount of attorneys' fees which may be awarded by the Court will be paid by Liberty National to an independent escrow agent approved by the Court and placed in escrow within three (3) working days after preliminary approval of this Settlement Agreement by the Circuit Court. All fixed dollar settlement funds shall bear simple interest at twelve percent (12%) per annum from the date of the Circuit Court's preliminary approval until the date the funds are paid into escrow by Liberty National. In the event (i) any aspect of the settlement agreement is rejected by the Circuit Court or approval of the settlement agreement by the Circuit Court is reversed, vacated, or modified on appeal, or (ii) an order precluding, barring, and enjoining separate actions by Class Members relating to the alleged cancer policy exchange programs or any of the Released Claims (as defined in Section III below) is not entered by the Circuit Court, or, if entered, is reversed, modified, or vacated in any respect on appeal; or (iii) any order is entered by the Alabama Supreme Court in any action now pending in any forum to which Liberty National is a party which permits the maintenance of separate individual or class actions asserting any Released Claims (as defined in Section III below) despite this settlement, then the escrowed settlement funds, attorneys' fees, and all accrued interest shall be returned from the escrow account to Liberty National. In the event the principal

amount of attorneys' fees provided for in paragraph II-19 is less than the amount escrowed, the excess shall be returned from the escrow account to Liberty National. If this Settlement Agreement is approved by the Circuit Court and a Final Order and Judgment barring separate individual or class claims is entered by said court, and if such approval, order and judgment are affirmed finally and in their entirety in the event of any appeal, the escrowed settlement funds and the escrowed attorneys' fees (or such portion of the attorneys' fees if less is approved by the Circuit Court and affirmed in the event of appeals), and all accrued interest or investment proceeds ("interest") will be paid as the Court may direct thereafter to the Class Members and Class Counsel, with interest to be paid to the parties to whom the settlement funds and the attorneys' fees funds are disbursed, i.e. with interest on the escrowed settlement funds distributed to the Class Members receiving the principal amount of the settlement funds; and with interest on the funds escrowed for attorneys' fees to be apportioned and distributed on the basis of the principal amounts to be distributed to Class Counsel and/or returned, if any, to Liberty National, all as provided in the written Escrow Agreement attached as Exhibit E.

5. Class Members Insured Under Old Policies Which Lapsed After August 29, 1986 May Reinstate Policies. Pursuant to the Injunction to be entered by the Circuit Court against Liberty National, Class Members who were named insureds under an old cancer policy in effect as of August 29, 1986 which was originally issued by Liberty National and which provided for benefits without monetary limits for radiation, chemotherapy,

prescription chemotherapy drugs and/or other out-of-hospital prescription drugs, and whose old policy lapsed after August 29, 1986 (but was not replaced within 30 days by a new policy), shall have the option to reinstate his/her old policy, on a prospective basis only, without regard to insurability, at the current 1993 premium rate based on such Class Member's age on the date the old policy was originally issued. Provided, however, if the old policy terminated solely because the Class Member attained the termination age under the old policy, then the Class Member is not eligible for a reinstated policy under this paragraph. Current 1993 premium rates will not be increased prior to January 1, 1995 (as provided in paragraph II-8). Premiums will be charged on a prospective basis only, and coverage will be on a prospective basis only. This option may be exercised by delivering a written request for reinstatement to: Thomas E. Hamby, Vice President, Liberty National Life Insurance Company, P.O. Box 2612, Birmingham, Alabama 35202. This option will expire if not exercised on or before January 1, 1995. If the option is exercised, reinstatement shall be effective only upon final approval of the Settlement (and final binding affirmance in the event of an appeal) and upon receipt of the applicable premium. Liberty National shall be enjoined to reinstate the policy of any Class Member who requests and qualifies for reinstatement under this paragraph. Any such reinstatement shall result in the cancellation of any new policy of such Class Member purchased while the Class Member was in lapsed status as to the old policy, and its replacement by the reinstated old policy on the terms provided in this paragraph. No one shall be construed by this agreement to qualify to

own two (2) policies concurrently. Upon the lapse for non-payment of premiums or cancellation by the Named Insured of any policy reinstated under this paragraph, Liberty National shall have no further obligation under this Settlement as to the lapsed policy or persons insured thereunder.

6. Class Members Insured Under New Policy to Receive Waiver of Limits on Benefits. Pursuant to an Injunction to be entered against Liberty National, Class Members who contemporaneously switched from an old policy to the new policy (and Class Members who lapsed the old policy, but bought a new policy within thirty days of that lapse and those Class Members who originally contemporaneously switched from an old policy to a new policy but subsequently switched from one new policy to another new policy) will receive reformation of their new policies (if such new policy is currently in force) so as to provide prospective coverage for the named insured and covered persons under the new policy without monetary limits (with an automatic waiver or removal of any and all "caps" or monetary limits) for otherwise covered radiation, chemotherapy, and prescription chemotherapy drugs, and receive prospective coverage without monetary limits (with an automatic waiver or removal of any exclusion) for other out-of-hospital prescription drugs prescribed in connection with the treatment of cancer. These prospective coverages shall apply to any claim for any expense incurred after the date of final approval (or final binding affirmance in the event of appeal) of this Agreement. All other provisions, terms, and conditions of the policy shall remain unchanged. (Benefit claims of Class Members under new policies accrued prior to the

date of this agreement are addressed by the restitution fund provided in paragraph II-10 and the ancillary settlement funds created in paragraphs II-9 and II-12 of this Agreement.) Class Members currently owning new policies and who are eligible for reformation under this paragraph shall be charged no additional premium for this additional coverage or waiver, provided, however, that claims paid under this additional coverage or waiver may be considered as claims experience for the purpose of future premium adjustments, subject to the provisions of paragraph II-8 of this Agreement. With respect to Class Members with new policies currently in force and who are eligible for reformation under this paragraph, Liberty National shall be enjoined from applying or enforcing any exclusion of benefits for out-of-hospital prescription drugs prescribed in connection with the treatment of cancer, and shall be enjoined from applying or enforcing any monetary limits or caps upon benefits for radiation, chemotherapy, or prescription chemotherapy drugs which is contained in any new policy currently owned by such Class Member; provided, however, that nothing herein shall prohibit Liberty National from continuing to enforce or apply such monetary limits or caps or exclusions with respect to policies owned by persons who are not Class Members or who are not eligible for reformation under this paragraph. The provisions of this paragraph II-6 shall apply only to new policies of said Class Members which are in force as of the date this Settlement Agreement is executed and shall apply to said policies only so long as they are kept in force and all premiums are paid (or after any reinstatement permitted under the terms of the policy upon full payment of all delinquent

premiums). In the event of any appeal from a Final Order of the Circuit Court approving this Settlement, the Injunction contemplated by this paragraph shall take effect upon final binding affirmance of said appeal.

7. Pooling of Class Members for Rate Making Purposes. For purposes of future premium rate filings, Liberty National will "pool" the experience of all Class Members in all states in which these policies were approved for issuance unless specifically disapproved by the insurance department of one or more of the states. After preliminary approval of the Settlement, Liberty National will file all future premium rates based on the "pooled" claims and premiums experience of all Class Members in all states in which these old and new cancer policies were approved for issuance, and the Court will enter an Order enjoining Liberty National to use its best efforts to obtain acceptance from all state insurance departments to allow Liberty National to "pool" the experience of all Class Members for rate making purposes. In the event the insurance department of one or more of the states disapproves "pooled" rate filing in that state, Liberty National will "pool" the experience of all Class Members in all remaining states. This settlement is not conditioned on approval of pooling of Class Members by any or all insurance departments in the states in which these policies were approved for issuance. This provision does not require Liberty National to pool policyholders or insureds who are not members of the Class with Class Members. The obligations of this paragraph shall expire if this Settlement is not approved by the Circuit Court or if such approval is reversed, vacated, or modified on appeal or other petition for review.

8. Premiums Not Increased From Current Rates.

Pursuant to the Settlement, an Injunction will be entered against Liberty National prohibiting Liberty National from increasing premiums for any old policies of Class Members currently in force and for any new policies of Class Members currently in force prior to January 1, 1995. Thereafter, the percentage of any premium rate increase for old policies of Class Members shall not exceed the percentage of premium rate increases for new policies of Class Members. The requirements of this paragraph do not apply with respect to persons who are not Class Members.

9. Incidental Monetary Settlement Fund for Class Members Who Submitted Certain Cancer Claims Under New Policies. Pursuant to the Injunction to be entered against Liberty National and ancillary to the equitable relief ordered by the Court, the trial court will order Liberty National to pay to the escrow agent the sum of one million dollars (\$1,000,000.00), subject to the terms and conditions of this settlement and the terms and conditions of the escrow agreement attached hereto as Exhibit E. All Class Members who return true and proper proof of claim forms (Exhibit C) as described in paragraphs II-10 and II-11 and who were named insureds on new policies pursuant to which benefit claims were submitted for radiation, chemotherapy or prescription chemotherapy drugs, or for whom expenses were incurred for other out-of-hospital prescription drugs prescribed in connection with the treatment of cancer administered to any covered person under the policy will share per capita

in this fund. With respect to other out-of-hospital prescription drugs prescribed in connection with the treatment of cancer, Class Members who submit a true and proper proof of claim form (Exhibit C), and who otherwise qualify under this paragraph, shall be entitled to share per capita in this fund if he/she incurred expenses for other out-of-hospital prescription drugs prescribed in connection with the treatment of cancer to any covered person under the Class Member's new policy which was in effect at the time the expenses were incurred. Within ninety (90) days of the deadline for submission of proof of claim forms provided in paragraph II-11, or within thirty (30) days of final binding affirmance of approval of this Settlement in the event of an appeal, whichever last occurs, Liberty National shall file with the Clerk and the Special Master a list setting forth the names and last known addresses of each Class Member shown by Liberty National records to be qualified to share in this fund. A check in the amount of each qualified Class Member's per capita share of this fund will be sent by the Escrow Agent (at Liberty National's expense) to the last known address of each such Class Member. Such check shall be mailed at the same time and in the same manner as set forth in paragraph II-11 below.

10. Liberty National to Provide Full Restitution of Certain Benefits to Class Members Who Have Submitted Certain Benefit Claims Under the New Policy. Pursuant to the Injunction to be entered against Liberty National, and ancillary to the equitable relief ordered by the Court, any Class Member who was a named insured under a new policy when a claim for cancer benefits under that new

policy was heretofore submitted for radiation, chemotherapy, or prescription chemotherapy drugs which exceeded the monetary limits for these coverages under said new policy, or whose expenses included any other out-of-hospital prescription drugs prescribed in connection with the treatment of cancer shall have the right to submit a proof of claim on the form attached as Exhibit C, with supporting documentation. If, after considering all benefits paid to (or to the assignee of) each such Class Member under the new policy (including but not limited to all benefits which would not have been afforded by the Class Member's old policy), the claimant Class Member has still received fewer dollars than he/she would have received for all benefits (including "hospital admission" benefits and all other benefits under the old policy) had the Class Member's old policy remained in force and all other benefits under the old policy, then Liberty National shall, pursuant to the Injunction contemplated hereby, make restitution of one hundred percent (100%) of the difference to the named insured under the new policy which was in force at the time of the pertinent treatment. To the extent each claiming Class Member qualifies for payment under this paragraph, he/she shall be paid the amount due hereunder without regard to any defense of the statute of limitations which could have been asserted by Liberty National had this case gone to trial. Only Class Members who were named insureds on the new policy which was in force at the time the treatment was rendered and who submit true and proper proof of claim forms with supporting documentation and who are otherwise eligible for payments under the terms of this paragraph ("Qualified Claims"), will be entitled to the

benefits of this paragraph. Copies of legitimate bills or invoices from medical providers will be considered adequate documentation, subject to Liberty National's right to contest the accuracy or validity of the claim. Upon written request by or on behalf of a claimant, Liberty National will use reasonable good faith efforts to assist in locating and providing any information reasonably available within its files or data processing records concerning the identity of providers and dates of service for any such claimant. Nothing in this paragraph shall require Liberty National to pay for any expense it has already actually paid, or to make duplicate payments for the same item of expense.

11. Administrative Procedure for Claims. The Court shall appoint a Special Master to review all claims and disputes which may arise with respect to proofs of claim made pursuant to paragraph II-10. The Special Master shall have no authority to alter or modify the terms of this Agreement. The Special Master shall not be a past or present employee or expert of or for any of the parties hereto or their counsel. The proof of claim form referenced in paragraph II-10 is attached hereto as Exhibit C. The proof of claim form shall be mailed at the same time and to the same persons as provided with respect to the Notice described in paragraph II-17 below. The proof of claim form shall require all claims to be submitted to the Special Master within 120 days of mailing. Within seven (7) days of receipt of each proof of claim form, the Special Master shall (i) submit one copy of each proof of claim form received to counsel for Liberty National, (ii) submit one copy of each proof of claim form received to Class Counsel; and (iii) file the original proof of claim form

with the Court. No later than ninety (90) days after said deadline for submission of proof of claim forms by Class Members, or thirty (30) days after final binding affirmance of this Settlement in the event of appeal, whichever last occurs, Liberty National shall submit to the Special Master a list of all proofs of claim, together with a statement of the amount (if any) calculated by Liberty National to be due each claimant as restitution under this paragraph. Within thirty (30) days following the expiration of the time for appeal, or following final binding affirmance of the Circuit Court, each claimant Class Member will then be notified in writing by the Special Master (at Liberty National's expense) of the preliminary disposition of his claim by Liberty National and will be notified that the Class Member can then obtain a special hearing of his claim by the Special Master by requesting such a hearing in writing addressed to Class Counsel, and that such request must be submitted within thirty (30) days. Class Members submitting a timely written request for hearing shall be notified in writing of the hearing date and the place of hearing set by the Special Master. Following said hearing, the Special Master shall make a final determination as to the claimant's entitlement under paragraph II-10, which determination shall be binding on the claimant and all other parties unless contested by either party, in which event the Special Master shall file his determination as his findings and recommendations to the Court for the final binding determination. Liberty National will be required to make restitution to each Qualified Claimant on the terms specified in paragraph II-10 within sixty (60) days after the final determination as to all proofs of claim, and the restitution

required by this paragraph II-11 as determined by the Special Master (or if disputed, by the Court) will be paid by a check payable to each pertinent named insured at the address shown in the named insured's proof of claim form. The proof of claim form and notice shall clearly notify Class Members that they must submit proof of claim forms within 120 days of mailing of the notice contemplated by paragraph II-17 below, regardless of any appeal of or objection to this Settlement, but that the filing of a proof of claim form shall not waive or otherwise preclude the Class Member's right to object to or appeal any approval of this Settlement by the Court, and that if the Court (or any appellate court) rejects any aspect of the Settlement, or if any other condition of this Settlement is not met, then the Class Member's submission of the proof of claim form shall not prejudice his right in any subsequent litigation.

12. Supplemental Extracontractual Monetary Relief Fund for Certain Class Members. Pursuant to the Injunction to be entered against Liberty National and ancillary to the equitable relief provided, the Court will order Liberty National to pay to the escrow agent the sum of three million dollars (\$3,000,000.00), subject to the terms and conditions of this settlement and the terms and conditions of the escrow agreement attached hereto as Exhibit E. Each Class Member who is a named insured under a new policy and who submits a valid and proper claim form which is determined (pursuant to the procedures of paragraph II-11) to demonstrate his/her entitlement to receive payment of restitution under the terms of paragraph II-10 ("Qualified Claimant") will, in addition to any other payment, share in this fund consisting

of three million dollars (\$3,000,000.00) to be paid by Liberty National to the escrow agent as provided in paragraph II-4. This fund will be divided among Qualified Claimants in an equitable method to be devised by the Court. The Court shall devise the most equitable methodology for distribution of this Supplemental Extra-contractual Monetary Relief Fund to all Qualified Claimants (i) per capita; or (ii) based on the amount by which each Qualified Claimant's total benefits which would have been received under the old policy exceeded the total benefits actually paid by Liberty National under the Class Member's new policy; or (iii) a combination of (i) and (ii) after determination of the number of Qualified Claimants and the amount of qualified claims. This fund shall be paid to each Qualified Claimant at the same time and in the same manner as provided in paragraph II-11 and shall be considered as ancillary to the restitution and other equitable relief afforded by the Settlement.

13. Deceased Class Members. The estate of a deceased named insured Class Member who otherwise qualifies will be entitled to any benefits for otherwise valid claims as provided by paragraph II-10, but will not share in benefits provided by paragraphs II-9 or II-12. The executor or administrator of the estate of any such deceased person shall be entitled to file the proof of claim form on behalf of the deceased and his/her estate, but shall be required to attach thereto a copy of documents sufficient to show that he/she is or was the executor or administrator of the deceased's estate. This requirement shall be clearly noted on the claim form.

14. Settlement Requires Rule 23(b)(2) Mandatory Class With No Right of Opt Out. This Settlement Agreement is conditioned on approval by the Court of a Rule 23(b)(2) mandatory class with no right to opt out, and a final court order (and final binding affirmance in the event of any appeal) expressly barring, enjoining, and precluding each Class Member from filing, prosecuting or participating as a litigant (by intervention or otherwise) in any separate individual or class suits regarding the alleged cancer policy exchange programs or asserting any claims which are to be "Released Claims" as defined in Section III below. Provided, however, that this prohibition shall not apply to restrict Named Plaintiff and Class Counsel from fulfilling their obligations under Section VI below. This Settlement Agreement is further conditioned on there being no decision by the Alabama Supreme Court inconsistent with this paragraph in any lawsuit involving the alleged cancer policy exchange programs to which Liberty National is a party prior to the entry (and final binding affirmance in the event of appeal) of the Final Judgment, approval and orders of the Circuit Court of Barbour County contemplated herein.

15. No Admission of Liability By Liberty National. Liberty National, by agreeing to the terms of this settlement, does not admit, but to the contrary denies, any liability or wrong-doing in any form or fashion by Liberty National, but has entered into this Settlement Agreement to avoid the expense, adverse publicity, and uncertainty of litigation, and for other reasons set forth above. Liberty National strongly contends that its new policies provide substantially greater overall benefits or coverage to most, if not all, insureds, and result in the payment of

greater total benefits to a majority of insureds who are later diagnosed with cancer. Liberty National denies that any Class Member or any other person would have any right to or grounds for obtaining the relief described herein, but is willing to agree to the terms of this settlement so that no Class Member can even arguably have been prejudiced by any aspect of Liberty National's decision to offer to replace its old cancer policies with a more modern policy.

16. Court Submittals. Counsel for the parties shall jointly submit to the Court and shall advise the Court that they jointly request court approval and entry of the following: (i) a proposed order preliminarily approving this Settlement Agreement and ordering notice to Class Members (attached hereto as Exhibit A); (ii) proposed notice to Class Members (attached hereto as Exhibit B) to be mailed by Liberty National and summary notice (attached hereto as Exhibit B-1) to be published by Liberty National as provided in Exhibit A, which advises them of the terms of this Settlement Agreement and of each Class Member's right to be heard concerning the fairness, reasonableness and adequacy of the settlement at a hearing before the Court; and (iii) proposed proof of claim form (attached hereto as Exhibit C) to be completed by the named insured Class Members specified in paragraph II-10 and designed to furnish information sufficient to enable Liberty National, the Special Master and the Court to calculate the amounts to which said named insured Class Members will be entitled under the terms of this Settlement Agreement if it is approved and if the conditions of this Settlement are satisfied; (iv) a proposed order and final judgment (attached hereto as Exhibit D)

which provides, inter alia, that the settlement is finally approved, and that all Claims asserted or which could have been asserted by Class Members regarding the alleged cancer policy exchange programs or the Released Claims (as defined in Section III below) are finally released and dismissed with prejudice (subject only to the enforcement of the terms of this settlement), and which bars and enjoins Class Members from filing, pursuing, or participating as litigants (by intervention or otherwise) in any separate individual or class actions asserting any of the Released Claims; and (v) a proposed escrow agreement (attached hereto as Exhibit E) to be executed by the escrow agent appointed by the Court and providing the duties of the escrow agent, and direction to the escrow agent as to the appropriate investments for the settlement fund, and the terms for release of the funds from escrow.

17. Notice to Class Members. As soon as practicable after preliminary approval by the Circuit Court, Liberty National shall, at its expense, mail a class action notice as required by Exhibit A, in a form approved by the Court and agreed to by Named Plaintiff, Class Counsel, and Liberty National, to the last known address of each Class Member specified in Exhibit A, which notice shall be mailed at least sixty (60) days in advance of the hearing date. Any Class Member who demonstrates that he failed to receive the class notice and who otherwise qualifies for restitution under paragraph II-10 can nonetheless avail himself of the benefits provided by paragraph II-10 within a reasonable time after receiving actual notice, and if his claim is filed before the funds provided in paragraphs II-9 and II-12 have been paid by the escrow agent,

the claimant will share in those funds as well to the extent he/she qualifies.

18. Payment of Court Costs. Liberty National shall pay all court costs taxed by the Court which shall consist of all expenses for class notice, fees and expenses of actuarial or other experts employed by Class Counsel, and fees and expenses of the Special Master as approved by the Court. Fees for the actuarial or other experts employed by Class Counsel shall not exceed the total sum of \$150,000.00, collectively. The hourly rate of the Special Master shall not exceed \$150.00 per hour.

19. Fees and Expenses for Class Counsel. Class counsel will petition the Court for an award of reasonable attorneys' fees and expenses which shall be paid by Liberty National in addition to all other costs and expenses provided for in Paragraph II-18 above in this Agreement. These attorneys' fees and expenses shall be in addition to and shall not be deducted from amounts to be disbursed to Class Members under the Settlement. The amount of attorneys' fees and expenses to be awarded to Class Counsel shall be determined by the Court, but in no event will the attorneys' fees exceed the total sum (for all Class Counsel, collectively) of 4.5 million dollars (\$4,500,000.00) for all attorneys' services relating to this Litigation, including but not limited to, services rendered and to be rendered in connection with the Settlement or its implementation. Liberty National will not object to any request for attorneys' fees in an amount not in excess of that amount. The expenses to which the Class Counsel shall be entitled will be restricted to actual and necessary out-of-pocket expenses as allowed by the Court not to

exceed \$35,000.00. These expenses shall be in addition to those specific expenses referred to in paragraph II-18.

20. Resolution of Objections. Any objections of Class Members to the certification of this action pursuant to ARCP 23(b)(2), to the fairness or adequacy of the settlement or class notice, to approval of the settlement by the Circuit Court, and any objections or disputes related to the allowance or disallowance of claims of Class Members, or the implementation or enforcement of this Settlement or the binding effect of this Settlement upon the claims of any Class Member, or relating to the award of attorneys' fees and expenses to Class Counsel within the limits imposed in paragraph II-19, or relating to any aspect of this Settlement shall be submitted to the Circuit Court of Barbour County for decision.

21. Final Judgment. This Settlement Agreement is subject to the Court entering a final judgment containing injunctive, declaratory and equitable relief (including reformation of policies, ancillary restitution and other ancillary monetary relief) necessary to implement this Agreement in substantially the form as set out in Exhibit D attached hereto. It is the intent of the parties that said Final Judgment shall be entered upon final Court approval of this Settlement Agreement. Subject to the terms and conditions of the Stipulation, Liberty National, its successors and/or assigns, and all persons or entities acting in concert with Liberty National, shall be enjoined: (i) from instituting, engaging or participating in, authorizing, maintaining, or continuing any of the alleged cancer policy exchange programs, (ii) from instituting, engaging or participating in, maintaining or authorizing any future program relating to the exchange, substitution, switching

or attempting to exchange, substitute, or switch Liberty National cancer insurance policies whereby the substituted policy excludes or limits any benefits that are provided in the replaced Liberty National cancer policy, without full disclosure of the benefits and coverages in the original and substituted policies, including disclosure of any benefits in the original policy which are excluded or limited benefits in the substituted policies; (iii) with respect to those Class Members specified in paragraph II-6, above, to reform the new policies of such Class Members currently in force to provide (subject to the terms and conditions of the Stipulation) prospective coverage without monetary limits for radiation, chemotherapy, prescription chemotherapy drugs administered to the named insured or any covered person under the new policy, and to provide prospective coverage without monetary limits or for other out-of-hospital prescription drugs prescribed to the named insured or any covered person under the new policy in connection with the treatment of cancer, so long as the current new policy remains in force and premiums are paid; (iv) from increasing the premiums on the old or new policies of Class Members prior to January 1, 1995; (v) to make restitution to the named insured Class Members for otherwise valid benefit claims heretofore accrued under the new policies of Class Members to the extent required by and in accordance with the terms and conditions of paragraphs II-10 and II-11 of the Settlement; (vi) from denying any otherwise valid future claims under the new policies of those Class Members specified in paragraph II-6 above for benefits for radiation, chemotherapy, prescription chemotherapy

drugs, and other out-of-hospital prescription drugs hereinafter administered to any covered person under the new policy in connection with cancer on the basis of any monetary limits upon or exclusions of coverage for said benefits under the new policies of such Class Members, subject to the terms and conditions of the Settlement; and (vii) to pay the two settlement funds and attorneys' fees into escrow and to pay other fees and expenses as set out in the Settlement Agreement and to implement all other terms of this Settlement. Each Class Member shall be enjoined from bringing any subsequent action asserting the Released Claims (as defined in Section III below).

22. Dismissal of Pending Claims. Subject only to final approval (and final binding affirmance in the event of appeal) of this Settlement Agreement upon the terms and conditions specified in this document and to the entry of the final judgment provided for in paragraph II-21 of this Settlement Agreement, all claims whatsoever which were or could have been asserted by the Named Plaintiff or by or on behalf of any Class Member (including, but not limited to, all claims which could have been asserted by intervention or otherwise) against Liberty National (or any of the related persons or entities to be released pursuant to Section III below) regarding the alleged cancer policy exchange programs or the Released Claims (as defined in Section III below) shall be dismissed with prejudice. Upon entry (and final binding affirmance in the event of appeal) of the final judgment provided for in paragraph II-21 of this Settlement Agreement, and without further action by anyone, each and all of the Class Members shall be deemed to have released Liberty National as set forth in Section III below.

23. Termination of Agreement. If this Settlement is not approved in its entirety by the Court by a final judgment which conforms to the provisions of this Settlement Agreement entered in accordance with Rule 54(b), or if any other condition of this Settlement Agreement is not met, then in that event: (i) the funds deposited with the escrow agent shall be returned to Liberty National together with all accrued interest; (ii) the parties and Class Members shall be restored to the status quo which existed prior to the execution of this Agreement; and (iii) the obligations of the parties to implement the settlement, other than the obligation of Liberty National to pay the fees and expenses of the actuarial expert employed by Class Counsel, any expense theretofore incurred by the Special Master and any expenses in connection with the Class notice, shall be null and void. Provided, however, that parties may, by written mutual agreement, executed in accordance with paragraph VII-5 below, waive any condition which they mutually agree is not material.

24. Nothing in this document or the orders contemplated hereby shall require Liberty National to take, or prohibit Liberty National from taking, any action with respect to persons who are not Class Members.

III. Released Claims.

Effective upon on the final approval of all aspects of this Settlement by the Circuit Court of Barbour County, Alabama, and the final, binding affirmance of said approval in the event of any appeal, Named Plaintiff, individually and on behalf of the Class, and each Class Member, separately and severally, do hereby fully, finally,

and forever release Liberty National and each of its past, present, and/or future: parents, subsidiaries, affiliated and related entities and persons, officers, employees, directors, shareholders, agents, successors, and assigns, separately and severally, of and from all claims, causes of action and liabilities (known or unknown) which have been or could be asserted by any Class Member, whether arising under state or federal statutory or common law, to the extent such claims, causes of action or liabilities arise from, are connected with, or are in any way based upon or related to any allegation of fraud, misrepresentation, concealment, failure to disclose, or other tortious conduct or breach of duty which occurred in whole or in part on or before the date of this Settlement Agreement, regarding (1) the alleged cancer policy exchange programs, (2) any other transaction resulting in the issuance of a new policy providing cancer coverage for a Class Member previously insured under an old policy, or (3) the failure to offer or issue any Class Member a new policy (the "Released Claims").

IV. Procedures to Obtain Court Approval.

The parties agree, as soon as practicable after execution of this Settlement, to take all necessary steps to obtain Court approval of the Settlement, as follows:

(a) the parties shall apply jointly for entry of an Order With Respect to Proposed Settlement (the "Preliminary Order") substantially in the form attached hereto as Exhibit A (i) providing that, for the purposes of settlement only, the Litigation shall proceed as a class action pursuant to ARCP 23(b)(2); (ii) directing that notice of the

proposed Settlement be provided by Liberty National to all Class Members specified in Exhibit A who can reasonably be identified by individual notice delivered by first class mail to the last known address of each Class Member, substantially in the form attached hereto as Exhibit B, and by onetime publication of a summary notice, substantially in the form attached hereto as Exhibit B-1, in the newspapers listed in the Preliminary Order; (iii) setting a hearing date for a fairness hearing pursuant to ARCP 23; and (iv) providing that any Class Member who objects to this Stipulation or to any part thereof, or to the fairness, adequacy or reasonableness of the Settlement, or to the procedures provided for herein, or to the maintenance of the Litigation under ARCP 23(b)(2), or to the contents and method of delivery of the notice, or to any Order or findings entered by the Court, may appear at the Settlement Hearing to show cause why the Settlement should not be approved, provided that such Class Member files at least ten (10) days prior to the date of the Settlement Hearing his or her written objections (and any briefs or supporting papers) with the Clerk of the Court and serves copies thereof upon counsel designated in the Preliminary Order to receive the same.

(b) following the fairness hearing, the parties shall jointly file a Motion for an Order and Final Judgment in substantially the form attached hereto as Exhibit D, approving the Settlement, and dismissing with prejudice all Released Claims (as defined in Section III above) which have been or could have been asserted by Named Plaintiff and all Class Members against Liberty National. It is contemplated by the parties that the Court shall, in

accordance with applicable law, enter appropriate Findings of Fact and Conclusions of Law regarding the approval or disapproval of this settlement, disposition of any objections which may raised [sic] at or in conjunction with the fairness hearing.

V. Costs of the Notice.

Liberty National agrees to pay the costs of preparation of the agreed-upon notice to Class Members of the proposed Settlement if said notice is approved by the Court, as well as the costs of delivery, mailing and publication of the Notice.

VI. Other Actions.

If any Released Claims (as defined in Section III above) are brought by any person in any court prior to the entry (and final binding affirmance in the event of any appeal) of a final judgment in the Litigation pursuant to the terms contemplated herein, all parties and Class Counsel shall cooperate to have the action (or actions) transferred to the Circuit Court of Barbour County, Alabama in which the Litigation is pending and to seek dismissal of the action (or actions) or to have such action or actions consolidated with this Litigation and subject to resolution pursuant to this Settlement. This paragraph shall be binding upon all parties and Class Counsel immediately upon final approval of this Settlement by the Circuit Court and shall continue to be effective unless and until said approval of the Settlement is reversed or vacated on appeal.

VII. Miscellaneous.

1. Additional Documentation. The parties agree to execute such additional documents as may be reasonably necessary to effectuate the settlement.

2. Authority to Execute. The undersigned person executing this agreement on behalf of Liberty National represents and warrants to the Plaintiff, Class Members and the Court that he is authorized to execute this agreement and to fully bind Liberty National to its terms.

3. Counterparts. This agreement may be simultaneously executed in several counterparts, each of which shall be deemed an original and all of which shall constitute but one and the same instrument. This agreement may also be executed in duplicate originals each of which shall be deemed an original for all purposes.

4. Entire Agreement. This document and the exhibits referenced herein constitute the entire agreement between the parties with regard to the subject matter hereof and all negotiations, oral or otherwise, prior to the execution of this Settlement Agreement are merged herein. The terms of this agreement may not be modified, varied or amended except in writing signed by all parties hereto and approved by the court.

5. Parties Bound. This agreement shall be binding upon and inure to the benefit of the parties hereto including all Class Members and their respective heirs, predecessors, privies, administrators, executors, representatives, guardians, successors and assigns.

6. Continuing Jurisdiction. All proceedings with respect to the Settlement and the determination of all

controversies relating thereto, including but not limited to enforcement of the judgment and of the terms of the Settlement and resolution of any disputed questions of law and fact with respect to the release of the Released Claims, shall be subject to the continuing jurisdiction of the Circuit Court of Barbour County, Alabama.

7. Counsels' Authority to Execute. Each of the attorneys executing this Settlement on behalf of Liberty National or Robertson, as Named Plaintiff and as Class Representative, warrants and represents that he or she has been duly authorized and empowered to execute this Stipulation on behalf of such party.

8. Nothing in this document or the judgments or orders contemplated hereby shall require Liberty National to provide insurance coverage for the treatment of a disease or condition which is not otherwise covered by the pertinent policy, or for drugs or treatments which have not [sic] approved for use in this country as described in the policies nor shall anything in this Agreement require Liberty National to allow the same insured to be covered under more than one (1) Liberty National cancer policy at the same time. No act of Liberty National in implementing any provisions of the Settlement at or before the time required hereunder shall estop or otherwise preclude Liberty National, in any respect, from withdrawing any benefits or coverage contemplated hereunder in the event this Settlement is rejected by the Court or reversed, vacated, or modified on appeal.

IN WITNESS WHEREOF, and intending to be legally bound thereby, this Settlement has been executed this 16th day of June, 1993 by the undersigned counsel on

behalf of their respective clients, and by the Named Plaintiff and Liberty National.

/s/ Jere L. Beasley
JERE L. BEASLEY
One of the Attorneys for Named Plaintiff and Class

OF COUNSEL:

BEASLEY, WILSON, ALLEN,
MAIN & CROW, P.C.
P.O. Box 4160
Montgomery, Alabama 36103-4160
(205) 269-2343

/s/ Walter R. Byars
WALTER R. BYARS
One of the Attorneys for the Class

OF COUNSEL:

STEINER, CRUM & BAKER
P.O. Box 668
Montgomery, Alabama 36101-0668
(205) 832-8800

/s/ James W. Gewin
JAMES W. GEWIN
One of the Attorneys for Liberty National

OF COUNSEL:

BRADLEY, ARANT, ROSE & WHITE
1400 Park Place Tower
Birmingham, Alabama 35203
(205) 521-8000

LIBERTY NATIONAL LIFE
INSURANCE COMPANY

BY: /s/ William C. Barclift
Its General Counsel

/s/ Charlie F. Robertson
CHARLIE FRANK ROBERTSON,
Individually and as court-
approved representative of the
Class

IN THE CIRCUIT COURT FOR
BARBOUR COUNTY, ALABAMA
Clayton Division

CHARLIE FRANK ROBERTSON, *	*
for himself, and in his	*
representative capacity for the	* Case Number:
class of persons described	* CV-92-021
herein,	*
	*
Plaintiff,	*
	*
vs.	*
	*
LIBERTY NATIONAL LIFE	*
INSURANCE COMPANY,	*
	*
Defendant.	*

ORDER ON MOTIONS TO INTERVENE

(Filed June 16, 1993)

Motions to intervene, having been filed by Willard C. Griffith, Sara E. Griffith, Dawn R. Tubb, Edith E. Fellows, Edna F. Brock, Guy Adams, Alice S. Adams, Johnny L. Fellows, Floyd E. Nelson, Delores H. Nelson, Arnold F. Pitt, Almitta Pitt, Eunice W. Long, Marsha N. Britton, and Jewel N. Jones, and the Court having considered same, is of the opinion that the motions should be granted and hereby Orders as follows:

1. The motions to intervene are hereby granted.
2. Each of the Intervenor is hereby made a party to this action and shall be bound by all Orders of this Court.
3. On or before July 6, 1993, Intervenor shall show cause as to why the Court should reconsider its prior Order of March 10, 1993.

4. On or before, July 6, 1993, Intervenor shall file briefs and supporting affidavits in support of their respective positions.

5. A hearing on Intervenor's petition is hereby set for July 27, 1993, at 9:00 a.m. in Clayton, Alabama.

6. The Court reserves ruling on requests (1), (2), and (3) in paragraph one of the Long motion.

DATED: June 16, 1993.

/s/ W. H. Robertson
CIRCUIT JUDGE

cc: Jere L. Beasley
Frank M. Wilson
James Allen Main
Walter R. Byars
Horace G. Williams
James W. Gewin
William C. Roedder, Jr.
W. Alexander Moseley
W. Boyd Reeves
Norman E. Waldrop, Jr.
M. Kathleen Miller

IN THE CIRCUIT COURT FOR
BARBOUR COUNTY, ALABAMA
Clayton Division

CHARLIE FRANK ROBERTSON, *	*	
for himself, and in his	*	
representative capacity for the	*	Case Number:
class of persons described	*	CV-92-021
herein,	*	
	*	
Plaintiff,	*	
	*	
vs.	*	
	*	
LIBERTY NATIONAL LIFE	*	
INSURANCE COMPANY,	*	
	*	
Defendant.	*	

**ORDER WITH RESPECT TO
PROPOSED SETTLEMENT**

(Filed June 16, 1993)

The parties to the above-captioned action having applied for an Order determining certain matters in connection with a proposed settlement in accordance with the Stipulation and Agreement of Compromise and Settlement ("the Stipulation" or "the Settlement"), and the Court having heretofore entered an order certifying this action as a Class Action;

NOW, upon the motion of the parties, after consideration of the Stipulation (Exhibit 1 hereto) and the exhibits annexed thereto, and after due deliberation, and consideration of the totality of the circumstances and the record, and for good cause shown, it is hereby

ORDERED, that:

1. The terms of the Settlement are preliminarily approved, subject to further consideration thereof at the Settlement hearing described below. The parties shall have twenty (20) days to make any modifications or corrections to the Stipulation or its exhibits which they mutually agree to be necessary, subject to further approval of the Court. Thereafter, modifications shall not be permitted except by mutual agreement by leave of Court with good cause shown.

2. The Court hereby reaffirms that this action shall be maintained as a Class Action pursuant to Alabama Rule of Civil Procedure 23(b)(2), by the Named Plaintiff as Class Representative and by the Named Plaintiff's counsel as Class Counsel, on behalf of a Class consisting of the following:

"All persons who now or in the past were insured under any cancer policy which (1) was issued by Liberty National Life Insurance Company ("Liberty National") on or before August 29, 1986, and (2) which provided benefits for radiation, chemotherapy, prescription chemotherapy drugs, and other out-of-hospital prescription drugs without monetary limits, and (3) was paid and in force (or in the grace period) on or after August 29, 1986, regardless of whether such policy remains in force, thereafter lapsed or was replaced by a different Liberty National cancer policy after that date; *provided, however*, that (i) any individual insured who is or was a named plaintiff in any separate lawsuit against Liberty National which was filed on or before March 10, 1993 and which alleges fraud, concealment, failure to disclose or misrepresentation in connection with the purchase, sale,

issuance, exchange or replacement of any one or more Liberty National cancer insurance policies is excluded from the Class *unless* such lawsuit has been voluntarily dismissed without prejudice on or before the date this settlement is finally approved by the Circuit Court of Barbour County, Alabama; (ii) any individual insured whose "old policy" lapsed prior to August 29, 1986 and was not thereafter reinstated (after payment by the insured of all delinquent premiums) by Liberty National is excluded from the Class; and (iii) any insured whose first Liberty National cancer policy was a new policy form issued after August 29, 1986 is excluded from the Class."

The description of the Class described herein shall clarify and relate back to the date of the prior Class certification order heretofore entered by the Court.

3. The Court finds for the purposes of settlement that the Named Plaintiff's counsel are adequate representatives of and the Class Counsel for respectively, and that all requirements of A.R.C.P. 23(a) and 23(b)(2) are met. The Court expressly finds, for purposes of these Settlement proceedings, that the Class is so numerous that the joinder of all members is impracticable; that Class Counsel is experienced and has adequately represented and will adequately represent the Class; that there are questions of law and fact common to the Class; the claims of Named Plaintiff are typical of the claims of the Class; that Named Plaintiff is an adequate representative of the Class; and that the representative parties have fairly and adequately protected the interests of the Class and will continue to do so. The Court finds that maintenance of this action as a Class Action pursuant to the Ala.R.Civ.P.

23(b)(2) is superior to any other means of adjudicating the claims herein raised. The Court further finds, for purposes of these Settlement proceedings, that Defendant's alleged conduct is generally applicable to the Class, thereby making appropriate injunctive and equitable relief with respect to the Class as a whole. The Court further finds, for purposes of these Settlement proceedings, that maintenance of this action pursuant to Rule 23(b)(2) is superior to maintenance of this action pursuant to Alabama Rule of Civil Procedure 23(b)(3), in that the vast majority of Class Members have not suffered cancer and have incurred little or no actual monetary damage as a result of the matters made the basis of the complaint. Moreover, the primary relief justified by the conduct alleged and the primary relief under the Settlement is injunctive relief whereby the Defendant would be enjoined from enforcing certain policy limitations, to effect a reformation of certain policies, and to make restitution and other monetary relief available to certain Class Members incidental to the primary equitable relief. The Court finds that all monetary relief provided by the Settlement is secondary and incidental to the primary injunctive and equitable relief. In these circumstances, the Court finds that certification pursuant to Rule 23(b)(2) would best facilitate the provision of maximum relief to the entire Class as a whole, including those who have suffered no damage or purely speculative damage at the present time but could otherwise arguably suffer damage in the future.

4. A hearing shall be held on October 20, 1993 at 9:00 a.m. at the Barbour County Courthouse in Clayton, Alabama. The purposes of the hearing shall be (a) to

determine whether the proposed Settlement on the terms and conditions of the Stipulation is fair, reasonable, and adequate and should be approved by the Court; (b) to determine whether Final Judgment should be entered in this action pursuant to the proposed Settlement; (c) to entertain any objections of any affected person(s) as to the certification of the Class, the proposed Settlement, or any other matter related thereto; and (d) to rule on all other matters pertaining to the proposed Settlement and such other matters as the Court may deem appropriate.

5. The Court reserves the right to adjourn the hearing without further notice of any kind other than oral announcement at the hearing.

6. The Court reserves the right following the hearing to approve the Settlement with or without modification and with or without further notice of any kind.

7. Liberty National shall use its best efforts to cause notice to be given to all persons identified as members of the Class, in accordance with this Order, as follows:

a. Not later than sixty (60) days after the entry of this Order, mail (by first class mail, postage prepaid) a Notice of Hearing and Settlement substantially in the form of Exhibit B to the Stipulation ("the notice") to each of the following persons whose identities and last known addresses are reasonably ascertainable from Liberty National's records; all persons listed as the named insured on Liberty National cancer insurance policies which are presently in force; all persons who were listed as the named insured on Liberty National cancer policies which were issued prior to August 29, 1986 and which were in force or in the grace period as of

that date; and all persons who are listed as the named insured under each "new policy" (as that term is defined in the Stipulation) pursuant to which any claim for radiation, chemotherapy, prescription chemotherapy drugs, or out-of-hospital prescription drugs prescribed in the treatment of cancer has been submitted (to Liberty National) since August 29, 1986. Provided, however, that Liberty National need not send notice to any such person whom Liberty National can identify from its records as being a person who is not a member of the Class. The notice shall include a copy of the Stipulation, as well as a copy of this Order, the proof of claim form contemplated by the Stipulation, and a copy of the proposed Order and Final Judgment attached as Exhibit E to the Stipulation.

b. With respect to any notices which are returned by the postal service undelivered, Liberty National shall use its best efforts to identify the present address of the intended recipient and to mail or personally deliver notice to each such individual no later than thirty (30) days in advance than [sic] the fairness hearing.

c. Not later than seventy-five (75) days after the entry of this Order, Liberty National shall cause to be published in the legal notices section of the following newspapers: *Clayton Record*, Clayton, Alabama; *Eufaula Tribune*, Eufaula, Alabama; *Union Springs Herald*, Union Springs, Alabama; *Mobile Press Register*, Mobile, Alabama; *Montgomery Advertiser/Journal*, Montgomery, Alabama; *Birmingham News*, Birmingham, Alabama; *Huntsville Times*, Huntsville, Alabama; *Dothan Eagle*, Dothan, Alabama; *Anniston Star*, Anniston, Alabama; and *USA Today*, and at least

one major newspaper (within the top three in circulation) in each other State in which Liberty National cancer policies are approved for issuance, a one-time summary notice of the hearing and Settlement, substantially in the form attached hereto as Exhibit B-1, including the name and address of Class Counsel from whom copies of the notice can be obtained upon request;

d. At least 7 days prior to the hearing, Liberty National and Class Counsel shall file or cause to be filed a proof of distribution of the notice in accordance with this paragraph 7. Said proof shall be in the form of affidavits executed by an appropriate representative of Liberty National and by Class Counsel verifying their compliance with the provisions of this paragraph 7.

8. The Court finds that the form and method of notice specified herein is the best notice practicable under the circumstances, and, if carried out, shall constitute due and sufficient notice of the Settlement and all other matters addressed in the notice and its exhibits, including without limitation, the pendency of this action, the maintenance of this action as a Class Action pursuant to Alabama Rule of Civil Procedure 23(b) (2), the terms of Settlement, the binding effect of the Settlement on all members of the Class, and the hearing, to all persons entitled to receive such notice. The notice attached as Exhibit B to the Stipulation is hereby approved.

9. Any briefs or other documents in support of the Settlement and in support of Named Plaintiff's request for an award of attorneys' fees and expenses shall be filed

by the parties with the Clerk of the Court not less than 3 days prior to the Settlement hearing.

10. Any member of the Class may appear at the hearing, in person or by counsel (if an appearance is filed and served as hereinafter provided), and be heard to the extent allowed by the Court in support of, or in opposition to the fairness, reasonableness and adequacy of the Settlement, the terms and conditions of the Settlement, the Final Judgment to be entered herein, the procedures adopted by the Court for its determination of whether to approve the Settlement, including but not limited to, maintenance of the action pursuant to Alabama Rule of Civil Procedure 23(b) (2), the binding effect of the Settlement on all members of the Class, the content and method of delivery of the notice, any orders or findings entered by the Court, Class Counsel's request for an award of attorneys' fees and expenses, and all other matters pertaining to this proposed Settlement. PROVIDED, HOWEVER, THAT NO CLASS MEMBER SHALL BE HEARD OR ENTITLED TO CONTEST SUCH MATTERS UNLESS THAT CLASS MEMBER HAS SERVED, NOT LESS THAN 10 DAYS BEFORE THE HEARING, BY HAND DELIVERY OR FIRST CLASS MAIL, POSTAGE PREPAID, WRITTEN OBJECTIONS AND COPIES OF ANY SUPPORTING PAPERS AND BRIEFS (WHICH MUST CONTAIN PROOF OF MEMBERSHIP IN THE CLASS) UPON THE FOLLOWING COUNSEL:

Designated recipient for Named Plaintiff: Jere Beasley,
Beasley, Wilson, Allen, Main & Crow, P.C.
P.O. Box 4160, Montgomery, Alabama 36103-4160

Designated recipient for Defendant: James Gewin,
Bradley, Arant, Rose & White

1400 Park Place Tower, Birmingham, Alabama 35203

AND UNLESS THAT CLASS MEMBER HAS ALSO FILED SUCH OBJECTION, PAPERS AND BRIEFS, SHOWING DUE PROOF OF SERVICE UPON NAMED PLAINTIFF'S DESIGNATED RECIPIENT AND DEFENDANT'S DESIGNATED RECIPIENT, WITH THE CLERK OF THE CIRCUIT COURT OF BARBOUR COUNTY, ALABAMA, CLAYTON, ALABAMA, COURTHOUSE, COURT SQUARE, CLAYTON, ALABAMA 36016 ON OR BEFORE OCTOBER 10, 1993 (10 DAYS IN ADVANCE OF THE FAIRNESS HEARING). NO PARTICULAR FORM OF WRITTEN OBJECTION IS REQUIRED. A SHORT, PLAIN STATEMENT OF EACH OBJECTION AND THE GROUNDS THEREFOR WILL BE SUFFICIENT. CLASS MEMBERS WHO WISH TO OBJECT MAY, BUT ARE NOT REQUIRED TO, OBTAIN COUNSEL AT THEIR OWN EXPENSE TO REPRESENT THEM IN CONNECTION WITH ANY SUCH OBJECTION. HANDWRITTEN OBJECTIONS WILL BE CONSIDERED.

11. Unless the Court otherwise directs, no member of the Class shall be entitled to be heard or object with respect to the fairness, reasonableness, or adequacy of the Settlement, the terms and conditions of the Settlement, any Final Judgment to be entered herein, the procedures adopted by the Court to consider approval of the Settlement, the binding effect of the Settlement on all members of the Class, the maintenance to the action as a Class Action pursuant to Alabama Rule of Civil Procedure 23(b)(2), the content and method of delivery of the notice, or any orders or findings entered by the Court, or any other matter pertaining to approval or disapproval of the Settlement, unless such Class Member shall have first

served and filed written objection as prescribed above. Any Class Member who fails to object in the manner prescribed above shall be deemed to have waived all such objections and any other objections relating to the subject matter of the litigation, and shall be forever barred from raising such objections or relitigating his individual claims in those or any other action or proceeding. Each Class Member desiring to object must file his own objection and appear personally or by counsel. No Class Member will be heard to assert purported objections of any other Class Member.

12. Pending final determination of whether the Settlement should be approved, the Named Plaintiff and all members of the Class are hereby enjoined and prohibited from commencing or prosecuting any action, either directly, individually, representatively, or in any capacity, asserting any claims which are proposed to be released pursuant to this Settlement (Released Claims, as defined in Section III of the Stipulation). Provided, however, that this Order shall not restrict the prosecution of the individual claims of any person who was a named plaintiff in any suit filed on or before March 10, 1993 and which alleges fraud, concealment, failure to disclose or misrepresentation in connection with the purchase, sale, issuance, exchange or replacement of any one or more Liberty National cancer insurance policies.

13. If the Settlement (including any modification thereto with the consent of the parties made as provided for in the Stipulation) is approved by the Court following the hearing, an Order and Final Judgment substantially in the form annexed to the Stipulation as Exhibit 2 may be entered: (i) approving the final certification of the Class

described in paragraph 2 hereof; (ii) approving the Settlement and all transactions preparatory or incidental thereto and all terms and conditions of the stipulation as valid, fair, reasonable, and adequate, and directing consummation of the Settlement in accordance with the terms and provisions of the Stipulation; (iii) enters a final injunction and other declaratory and equitable relief permanently enjoining and requiring Liberty National to perform its obligations (including reformation of the new policies, ancillary restitution and the ancillary monetary relief) set forth in this Settlement Agreement (the "Injunction"), and subject to said Injunction and the right to enforcement thereof pursuant to the continuing jurisdiction reserved by the Court, approves the release of and dismisses with prejudice all claims asserted or which could have been asserted in this Litigation by or on behalf of the Class Members or any of them against the Defendant relating to the alleged cancer policy exchange programs or to the Released Claims as defined in Section III of the Stipulation; (iv) permanently barring and enjoining each and all Class Members from filing or participating as a litigant in any individual lawsuit or class action relating to the alleged cancer exchange programs or asserting any of the Released Claims (as defined in Section III of the Stipulation); and (v) reserving jurisdiction over all matters related to the administration, consummation, interpretation, and enforcement of the Stipulation and Settlement.

14. Those Class Members who are described in paragraphs II-9, II-10, and II-12 of the Stipulation and who otherwise qualify thereunder for the restitution and ancillary monetary relief provided in those paragraphs

must submit completed proof of claim forms to Class Counsel, in accordance with the instructions set forth on the proof of claim form, no later than December 20, 1993 (120 days after the deadline for the mailing of the notice described in paragraph 7(a) of this Order). This deadline must be complied with regardless of whether the person eligible to submit the proof of claim form objects to the Settlement. If the Settlement is not approved by this Court, or if the approval of the Settlement is set aside by an appellate court, a Class Member's submission of the proof of claim form shall in no way prejudice the rights of said Class Member in any subsequent litigation. If the Settlement is ultimately approved and affirmed in the event of any appeal, the restitution and ancillary monetary relief provided for in paragraphs II-9, II-10, and II-12 of the Stipulation shall be payable only to those persons who submit true and proper claim forms on or before December 20, 1993 and otherwise qualify for said relief under the terms of the Stipulation. The filing of a proof of claim form shall not waive or preclude the claimant's right to object to or appeal from this Settlement.

15. If the Settlement is not approved by the Court or shall not become effective for any reason whatsoever, then, and in that event, the Settlement proposed in the Stipulation and any actions taken or to be taken in connection therewith (including this Order and any judgment entered herein) shall be terminated and shall become void and have no further force and effect except for Liberty National's obligation to pay for any expenses incurred in connection with the notice provided for by this Order, and incurred in the employment of an actuarial expert for Class Counsel.

DONE, ORDERED, ADJUDGED AND DECREED,
this 16th day of June, 1993.

/s/ W. H. Robertson
CIRCUIT JUDGE

IN THE CIRCUIT COURT OF
BARBOUR COUNTY, ALABAMA
CLAYTON DIVISION

CHARLIE FRANK ROBERTSON,)	
individually and on behalf)	
of a class,)	
Plaintiffs,	)	CIVIL ACTION
	)	NO. CV-92-021
v.)	
LIBERTY NATIONAL LIFE)	
INSURANCE COMPANY,)	
Defendant.)	

MOTION FOR SUBSTITUTION OF NEW FAIRNESS
HEARING DATE IN DOCUMENTS TO BE MAILED
TO CLASS MEMBERS, FOR DESIGNATION OF
ADDRESS FOR SPECIAL MASTER, FOR
CORRECTION OF TYPOGRAPHICAL ERROR IN
JUNE 16, 1993, ORDER WITH RESPECT TO
PROPOSED SETTLEMENT, AND FOR CORRECTION
OF INADVERTENT OMISSION IN STIPULATION
PRIOR TO MAILING OF CLASS ACTION
NOTICE AND ATTACHMENTS

(Filed August 2, 1993)

Defendant Liberty National Life Insurance Company, with the consent of Class Counsel, hereby moves the court for: (1) Permission to substitute the corrected date of November 4, 1993 as the date of the Fairness Hearing in all documents to be mailed to Class Members; (2) for an order designating a post office box for use of the Special Master to be appointed by the Court, so that the address thereof may be listed in the appropriate places in the Notice and Proof of Claim Form to be mailed to

members of the class; (3) the correction of a typographical error or omission in paragraph 3 of the Court's Order With Respect to Proposed Settlement of June 16, 1993; and (4) the approval of the correction of an inadvertent omission in the Stipulation as provided in Exhibit A, attached, prior to mailing of the Notice and Stipulation to class members. As grounds therefor, Liberty National would show unto the Court as follows:

1. The Notice and Proof of Claim Form to be mailed to class members contains instructions to return the Proof of Claim form to the Special Master. However, as yet, no address has been designated by the Court for return of the Proof of Claim Forms. Before the Notice and Proof of Claim Form can be mailed to class members, an address must be inserted. The Notice, Proof of Claim Form and other attachments are due to be mailed on approximately August 16, 1993.

2. In the Court's Order With Respect to the Proposed Settlement, and particularly in paragraph 3 thereof, there is the following clause:

3. The Court finds for purposes of settlement that the Named Plaintiff's counsel are adequate representatives of and the Class Counsel for respectively, . . .

June 16, 1993 Order With Respect to Proposed Settlement,
¶ 3. There appears to have been an omission from this clause which makes the clause unintelligible. Counsel for the class and for Liberty National believe that the sentence was supposed to read as follows:

3. The Court finds for purposes of settlement that the Named Plaintiff and Class Counsel are adequate representatives of and counsel for the Class, respectively, . . .

Liberty National therefore requests the Court to order that paragraph 3 of the June 16, 1993 "Order With Respect to Proposed Settlement" is amended as herein reflected.

3. Liberty National further seeks permission from the Court to substitute the date of November 4, 1993 (in place of October 20, 1993) as the date of the fairness hearing for purposes of the printed notice, proof of claim form, and other documents to be mailed to Class Members, in accordance with the Court's oral announcement on July 27, 1993.

4. The Stipulation and Agreement of Compromise and Settlement executed by Liberty National and Class Counsel on June 16, 1993 contains an inadvertent omission which was discovered during the process of proof-reading the notice for purposes of printing and mailing. Under the Paragraph II-6 of the Stipulation, the Stipulation makes it clear that reformation of new policies currently in force will be available not only to class members who contemporaneously exchanged an old policy for a new policy, but also to "class members who lapsed the old policy, but bought a new policy within 30 days of that lapse, and those class members who originally contemporaneously switched from an old policy to a new policy, but subsequently switched from one policy to another new policy". Obviously, the same language should have been carried over to Paragraphs II-9, II-10, and II-12 of the Agreement, which deal with restitution and eligibility to share in the two supplementary pools. However, this

language was inadvertently omitted from paragraphs II-9, II-10, and II-12 of the Stipulation. As shown by Exhibit A hereto and pursuant to this Court's June 16, 1993 Order, Named Plaintiff, Class Counsel and Liberty National are in agreement that the Stipulation should be corrected in this regard before the printed notice and Stipulation are mailed to class members.

WHEREFORE, Liberty National respectfully requests the Court to enter an Order designating a post office box or address for return by class members of the Proof of Claim forms to the Special Master; to enter an order correcting paragraph 3 of the June 16, 1993 "Order With Respect to Proposed Settlement" as reflected herein or in such manner as the Court may deem appropriate; to enter an order approving the substitution of the date of November 4, 1993 as the date of the fairness hearing in all documents to be mailed to Class Members; and to enter an Order approving the correction of the inadvertent omission described above in the Stipulation and Agreement of Compromise and Settlement before said Stipulation is mailed to class members. For the convenience of the Court, a proposed order is attached.

/s/ James W. Gewin
James W. Gewin

/s/ Michael R. Pennington
Michael R. Pennington
Counsel for Liberty National
Life Insurance Company

OF COUNSEL:

BRADLEY, ARANT, ROSE & WHITE
1400 Park Place Tower
Birmingham, Alabama 35203
(205) 521-8000

/s/ Horace Williams
Horace Williams
Counsel for Liberty National
Life Insurance Company

P. O. Box 896
Eufaula, Alabama 36072-0896

CERTIFICATE OF SERVICE

I hereby certify that I have this date served the foregoing Motion For Designation Of Address Of Special Master, for Correction of Typographical Error in Proposed Order of June 16, 1993, and for Correction of Inadvertent Omission in Stipulation Prior to Mailing of Class Action Notice And Attachments on

William Roedder, Esq.
Hand, Arendall, Bedsole,
Greaves and Johnston
P. O. Box 123
Mobile, Alabama 36601,

Mary Katherine Miller, Esq.
Armbrecht, Jackson, DeMouy,
Crowe, Holmes & Reeves
P. O. Box 290
Mobile, AL 36601

John Richardson, Esq.
Richardson, Daniel,
Spear and Upton
P. O. Box 16428
Mobile, Alabama 36609

Joe Sullivan, Esq.
Hamilton, Butler, Riddick,
Tarlton & Sullivan
P. O. Box 1743
Mobile, AL 36633-1743

Frank Wilson, Esq.
Beasley, Wilson, Allen,
Main & Crow
10th Floor Bell Building
807 Montgomery Street
P. O. Box 4160
Montgomery, Alabama 36103-4160

Walter Byars, Esq.
Steiner, Crum & Baker
8th Floor
First Alabama Bank Building
Montgomery, AL 36104

Larry U. Sims, Esq.
Helmsing, Lyons, Sims & Leach
P. O. Box 2767
Mobile, Alabama 36652-2767

by placing a copy of same in the United States Mail, first-class postage prepaid and addressed to their regular mailing address, on this 30 day of July, 1993.

/s/ Horace Williams
Of Counsel

Exhibit A

IN THE CIRCUIT COURT OF
BARBOUR COUNTY, ALABAMA
CLAYTON DIVISION

CHARLIE FRANK ROBERTSON,)
individually and on behalf)
of a class,)

Plaintiffs,)

v.)

LIBERTY NATIONAL LIFE)
INSURANCE COMPANY,)

Defendant.)

CIVIL ACTION
NO. CV-92-021

AMENDMENT TO JUNE 16, 1993 STIPULATION AND
AGREEMENT OF COMPROMISE AND SETTLEMENT

Named plaintiff Charlie Frank Robertson, Class Counsel Jere Beasley, James Main, Frank Wilson, and Walter Byars, and defendant Liberty National hereby agree, subject to court approval, that the Stipulation and Agreement of Compromise and Settlement ("Stipulation") heretofore executed by them on June 16, 1993, is hereby amended to correct an inadvertent omission, by adding the following sentence to the end of each of paragraphs II-9, II-10 and II-12 of the Stipulation.

Class members eligible hereunder for the benefits of this paragraph shall include and be limited to those class members described in this paragraph who contemporaneously switched from an old policy to a new policy (including class members who lapsed the old policy, but bought a new policy within 30 days of that

lapse), and any such class members who originally contemporaneously switched from an old policy to a new policy but subsequently switched from one new policy to another new policy.

DATED: July 29, 1993.

/s/ Charlie Frank Robertson
Charlie Frank Robertson,
Named Plaintiff, individually
and on behalf of the Class

/s/ Jere Beasley
Jere Beasley

/s/ Frank Wilson
Frank Wilson

/s/ James Main
James Main
Class Counsel

OF COUNSEL:

Beasley, Wilson, Allen,
Main & Crow
10th Floor Bell Building
807 Montgomery Street
P. O. Box 4160
Montgomery, Alabama 36103-4160

/s/ Walter Byars
Walter Byars, Class Counsel

OF COUNSEL:

Steiner, Crum & Baker
8th Floor
First Alabama Bank Building
Montgomery, AL 36104

LIBERTY NATIONAL LIFE
INSURANCE COMPANY

By: /s/ William C. Barclift
William C. Barclift
Its: General Counsel

/s/ James W. Gewin
James W. Gewin
One of the Attorneys for
Liberty National Life
Insurance Company

OF COUNSEL:

BRADLEY, ARANT,
ROSE & WHITE
1400 Park Place Tower
Birmingham, Alabama 35203
(205) 521-8000

IN THE CIRCUIT COURT OF
BARBOUR COUNTY, ALABAMA
CLAYTON DIVISION

CHARLIE FRANK ROBERTSON, *
for himself and in his *
representative capacity for the *
class of persons described herein, *

Plaintiff, *

CASE NO.
CV-92-021

v. *

LIBERTY NATIONAL *
INSURANCE COMPANY, *

Defendant. *

OBJECTION TO CLASS CERTIFICATION, CLASS
NOTICE, DENIAL OF DISCOVERY, ISSUANCE OF
INJUNCTION AND CLASS SETTLEMENT, AND
ALTERNATIVE REQUEST TO OPT OUT OF CLASS

Come now the following Objectors: Guy and Alice Adams, Retha B. Attaway, Herman and Beatrice Bateman, Edna F. Brock, Dr. Neil Capper, Billy and Anna Clausen, John and Mary Day, Arthur and Peggy Dickinson, Edith E. Fellows, Johnny F. Fellows, Mary L. Fowler, Willard Griffith, Sara Griffith, Dawn R. Tubb, Johnnie and Bertha Jones, John and Hazel Jefferson, George and Mary Kountz, Martha Massengale, Seraphim Massengale, Floyd and Delores Nelson, Ethel M. Offord, Vernon and Estelle Permenter, Mary Perez, Arnold and Almetta Pitt, Alex and Doris Rivers, Joseph and Joy Savell, Ola Saxon, John and Mary Stockman, John and Grace Turner, Charles and Linda Warren, Colonel and Jeanne Weaver, Catherine H. Whigham, James and Betty White, Edna White, Sheila

White, Tommy White, Melvin and Rita Williams, and Bertha Williams, who hereby object to the Certificate of a Rule 23(b)(3) class in this matter, to the denial of discovery sought by intervenors, to the injunction issued by this Court on June 16, 1993, to the Class Notice served in August, 1993, and to the fairness of the proposed class settlement, and we hereby give notice of our intention to appear and testify at the fairness hearing scheduled to commence on November 4, 1993. Alternatively, we request that the Court permit us to opt out of the class heretofore certified in this litigation so that we can independently pursue our own claims against the Defendant and others for their fraud and other misconduct. Our objection and alternative request are based upon the following:

1. We were insured under a cancer policy ("Old Policy") that was issued by Liberty National on or before August 29, 1986, and that provided benefits for radiation, chemotherapy, prescription chemotherapy drugs, and other out-of-hospital prescription drugs without monetary limits, and it was paid and in force (or in the grace period) on or after August 29, 1986. We are not named plaintiff in any lawsuit against Liberty National filed on or before March 10, 1993 alleging fraud, concealment, failure to disclose or misrepresentation in connection with the purchase, sale, issuance, exchange or replacement of any one or more Liberty National cancer insurance policies. Our "old policy" did not lapse prior to August 29, 1986. Our first Liberty National cancer policy was not a new policy form issued after August 29, 1986. We were thereafter induced to replace this policy with a new Liberty National cancer policy ("New Policy"). We

were induced to agree to this replacement (i) by misrepresentation that the New Policy was better than the Old Policy, (ii) by the suppression of the fact that the New Policy contained substantial limitations upon expenses incurred for chemotherapy, radiation therapy, prescription chemotherapy drugs, and other out-of-hospital prescription drugs, (iii) by an incomplete, inaccurate and misleading comparison of the terms, conditions or benefits contained in the Old Policy and the New Policy; and/or (iv) by misrepresentations that the Old Policy was no longer available and that we were required to switch to the New Policy. We understand that the misrepresentations made to me were part of a pattern of intentional wrongful conduct carried out by Liberty National and others.

2. The class was improperly certified in this case because the claims of Charlie Frank Robertson are not typical of the claims of the other class members.

3. The class was improperly certified in this case because the claims of Charlie Frank Robertson are not common to all class members.

4. The class was improperly certified in this case because Charlie Frank Robertson is not an adequate representative of the interests of class members.

5. The class was improperly certified because the requirements of Rule 23(a), Alabama Rules of Civil Procedure, have not been shown to have been met.

6. The class was improperly certified because this action, and/or the claims Class Counsel have attempted to compromise, are not primarily injunctive in nature.

7. The class was improperly certified because the party "opposing" the class, Defendant, and other parties proposed to be exculpated by the proposed settlement herein, have not acted or refused to act on grounds generally applicable to the class.

8. In support of our position that the class should not be certified, the settlement should not be approved and that we should be allowed to opt out of the class we adopt by reference all grounds set forth in Sections A, B and C of the Intervention Petition and Motion to Amend Intervention Petition filed with this Court and served on counsel of record on June 10, 1993 and June 25, 1993, respectively, as additional grounds for this pleading.

9. Class Counsel have not acted in the best interests of the class members, they represent class members who have different and conflicting interests, have not acted competently in respect of the interests of the class members, and have otherwise not adequately represented the best interests of the class members.

10. Class Counsel participated in the defining of the class in such a fashion as to permit them to file independent fraud suits for certain of their clients against Liberty National (i.e., suits filed on or before March 10, 1993 are not precluded by the class action), providing those clients with the equivalent of "opt-out" rights not provided to the remainder of the class. Those clients then elected (through their counsel) to opt-out by filing suits against Liberty National on or before March 10, 1993. Although some of these claims were later dismissed without prejudice, the filing of such action afforded all such plaintiffs a right to elect to opt into or out of the class, a right not

enjoyed by other class members. Some such claims remain pending, and the dismissed claims have been settled. Such action constitutes an acknowledgment that pursuit of individual claims, not participation in the class action and its proposed settlement, is in the best interests of class members.

11. The class notice approved by the Court and sent to class members is misleading, inadequate and insufficient. The notice contains misstatements/mischaracterizations of fact, mischaracterizations of the litigation and its background, mischaracterizations of the benefits of the settlement to class members, omissions of material facts, and insufficient information to afford class members a basis upon which to evaluate the fairness of the settlement in light of all circumstances. The notice is incomprehensible to the average reader to whom it is directed. The notice is procedurally deficient because it was not designed to be distributed in a manner most likely to reach most class members. The class notice was designed to reach as few class members as possible, and to elicit a [sic] few objections or inquiries as possible from the class members that it did reach, all in the interest of preserving the proposed settlement against attack by classmembers. Moreover, the grounds for reconsideration and objections set forth in the "Amended Motion for Reconsideration of August 3, 1993 [sic] Order Approving Printed Notice, Summary Notice, and Their Distribution and Publication" heretofore filed with this Court and served on counsel to this case on August 19, 1993 are adopted by reference as additional grounds for this pleading.

12. The class certification and class settlement are premature because insufficient discovery has been

allowed by the Court as to the lawsuit merits, as to the propriety of class certification, as to the adequacy of the representation of the class by Class Counsel and the Class Representative, and as to the value and fairness of the settlement to the class members.

13. The class settlement should not be approved because Class Counsel, at the time such settlement was negotiated, represented certain individual policyholders and had sued Liberty National for fraud in connection with its cancer exchange program. Accordingly, Class Counsel may have been interested in insuring that Liberty National reserved sufficient assets and liquidity to satisfy any judgment or settlement in favor of those individual policyholders. Moreover, Class Counsel may have been interested in a class settlement that committed as little of Liberty National's assets as possible.

14. The class settlement ought not be approved because it provides inadequate monetary recovery to that sub-class of policyholders who have had cancer claims and provides for a measure of recovery that is inconsistent with law.

15. The class settlement ought not be approved because it provides no monetary recovery for the sub-class of cancer policyholders who have not had cancer, despite requiring them to release their fraud claims.

16. The class settlement ought not be approved because it treats classmembers differently than those policyholders who would be class members but for the fact that they filed suit on or before March 10, 1993, thus denying class members equal protection, equal treatment

and other statutory, common law, and constitutional rights.

17. The class settlement ought not be approved because it requires that all class members release all claims against Liberty National, Torchmark, their agents and others without adequate compensation and denies all class members their right to due process, a jury trial and other statutory, common law and constitutional rights by forcing them to accept the settlement proposal without any right to opt-out of the class.

18. The class settlement ought not be approved because the discovery and settlement negotiations were not conducted in a genuine, hard-fought, arms-length manner.

19. The class settlement ought not be approved because Class Counsel have refused class members access to information and have objected to and impeded the efforts of class members to secure discovery of information bearing upon the fairness of the settlement, the propriety of the certification of the class, and the adequacy of the representation of the class, and they have otherwise taken action contrary to the best interests of class members.

20. The class settlement ought not be approved because the amount of the settlement to be paid by Liberty National to class members is grossly unfair and insufficient, particularly in light of the compensatory damages suffered by the class members and the nature and extent of the scheme to trick and defraud that Liberty National practiced on 380,000 policyholders. Liberty National is to be relieved of substantial fraud claims and

damage liability for a nominal sum per fraudulent misrepresentation, and for no monetary compensation whatsoever for most class members.

21. The class settlement ought not be approved because the monetary relief awarded does not sufficiently punish Liberty National for its massive scheme to trick and defraud its cancer policyholders. The \$4 million contribution by Liberty National to settle 380,000 potential fraud claims amounts to the equivalent of one weeks' interest income for Liberty National, according to its annual report for 1992. Such contribution will not adequately punish a corporation with \$2.4 billion in assets (or deter others); nor would it adequately deter or punish Liberty National's parent corporation, which reported net income in excess of \$78 million in the second quarter of 1993.

22. The class settlement ought not be approved, because of the volume and nature of the objections interposed by class members.

23. The class settlement ought not be approved, because it fails to reasonably take into account the likelihood that the class and/or the individual class members would succeed on the merits of their individual cases, and the likely value of such success.

24. Liberty National has agreed not to object to payment of fees to Class Counsel in the amount of \$4.5 million. Objection is made to any award of attorney's fees without the necessary and proper foundation and proof. Moreover, objection is made to the said agreement not to object for the reason that, *inter alia*, Liberty National's said promise cannot avoid having the tendency to induce

Class Counsel to support the settlement; to the contrary, fees for Class Counsel should be set according to law after the fact.

25. The class settlement ought not be approved, because it requires the exculpation from liability of numerous potential defendants even though:

- (a) Such proposed releases are not parties to this action and never were;
- (b) No discovery has been allowed from, or even about, such proposed releasees and neither Class Counsel nor the Court has any basis to evaluate the enormity of any wrongs committed by, or the solvency of, any such proposed releasees;
- (c) No consideration has been or will be given by any of such proposed releasees for the valuable benefit of receiving compulsory general releases of not less than 380,000 causes of action in tort.

26. The Court should not award attorney's fees to Class Counsel, because discovery regarding those fees has been denied, and Class Counsel have not notified class members of any basis for any fee request and have thereby deprived class members of information upon which to evaluate such a request. The submission to be made by Class Counsel three days prior to the November 4, 1993 hearing will come too late to afford class members an adequate opportunity to receive, analyze, and respond to that information prior to the hearing.

27. The class settlement ought not be approved and the class should be decertified, because the discovery undertaken by Class Counsel (and the discovery allowed

to be conducted by Intervenor) is inadequate to ascertain: (a) whether or not the class should be certified and if so whether it should be certified as a 23(b)(2) class; (b) whether or not Class Counsel and the Class Representative has adequately represented and protected the interests of the class and the individual class members; (c) whether or not the settlement is fair, adequate, reasonable and in the best interests of the class and the individual class members; (d) the likelihood of success on the merits, and the value of the individual claims of class members; (e) what discovery previously was undertaken in the case, and what such discovery revealed; (f) the negotiations leading up to the settlement; (g) the extent to which the negotiations and discovery previously conducted were hard-fought, arms-length, and in good faith and comprehensive; (h) the likelihood of success on the merits; (i) the nature and scope of the fraud practiced by Liberty National; (j) the amounts paid by Liberty National to settle (or satisfy judgment in) other similar cases; and (k) the facts bearing upon the other issues as to which Intervenor sought discovery but were denied same.

28. The discovery that was ordered to be produced by Class Counsel in the form of documents and deposition transcripts was so conditioned by the Protective Order issued on September 9, 1993 as to unduly, unnecessarily, illegally and unconstitutionally hamper and restrict our counsel in his communications with us, in his representations of us and in his development of the facts and witnesses necessary to a fair and adequate development and presentation of the facts bearing on the issues presented in these proceedings. We adopt by reference

the grounds set forth in the "Objections To Protective Order Proposed By Liberty National And Motion To Enter Alternative Confidentiality Order" filed with the Court and served on counsel of record on September 1, 1993 as additional grounds for this pleading.

29. We do not wish to have our claims against Liberty National adjudicated in this class action. We specifically request that the Court permit us to opt out of this class pursuant to the Court's authority under Rule 23(d) of the *Alabama Rules of Civil Procedure*. We have been substantially damaged as a result of Liberty National's massive scheme to trick and defraud its cancer policyholders. We have lost money by paying increased premiums for coverage that was not as good as it was represented to be. We never would have paid these higher premiums if Liberty National had not misrepresented the quality of the coverage, suppressed the limitations on the coverage, misrepresented the true facts by misleading, inaccurate and incomplete comparison of the two policies, and/or represented to us that we had no choice but to drop the old policy and take the new one. We may now face [sic] the prospect of not being able to procure adequate cancer coverage elsewhere or incurring additional expense to procure cancer coverage from another insurer to replace the inadequate coverage fraudulently sold to us. We have suffered mental anguish and emotional distress at this prospect and at the prospect of incurring expenses for the treatment of cancer that were represented to be, but are not covered by our cancer policy. We are not interested in continuing as an insured of Liberty National under a "reformed" cancer policy; rather, we wish to present our fraud case to a jury and

ask the jury to award us compensatory and punitive damages against Liberty National Torchmark, and their agents. We are willing to accept the risk of failure of such claims before a jury. We believe that the verdict in such a case would be substantial; we are willing to accept the risk that the verdict in such a case might be very small or nothing at all. We believe the class settlement is a colossal effort by Liberty National to avoid the risk of a large number of such lawsuits, but we do not believe that the class relief offered by Liberty National can be constitutionally imposed on us under the circumstances.

30. We do not wish to present claims against Liberty National for declaratory or injunctive relief. Accordingly, we make the alternative averment (and wish to preserve the position) that we are not a member of the class as defined in this Court's March 10, 1993 Order and its later clarification of that class definition, said clarification having been issued by this Court on June 16, 1993.

31. We adopt by reference the grounds set forth in support of the "Motion For Relief From And/Or Clarification Of Order With Respect To Proposed Settlement" filed with this Court and served on counsel of record on June 25, 1993, as grounds for this pleading, including my positions stated herein: (a) that the class should not be certified; (b) that the injunction previously issued by the Court was improper and unconstitutional; (c) that the class settlement should not be approved; and (d) that I should be allowed to opt-out of the class.

32. We object to the reliance upon equitable remedies in the designation of the class and in the settlement of the claims, inasmuch as each class member has an adequate remedy at law.

33. We also hereby notice [sic] of my intention to appear and testify in these proceedings in order to fully and completely voice my objection and state my position in person.

34. We adopt every objection and every ground for objection filed or submitted by any other objector in respect of the proposed settlement of this, and in respect of the effort to resolve this on a class basis.

WHEREFORE, we object to the certification of any class; we object to the clarification of a Rule 23(b)(2) class; we object to the sufficiency of the class notice issued in this case; we object to the denial of discovery in this case; we object to the injunction issued in this case; we object to the class settlement proposed in this case; and we request that the Court permit us to opt out of the class certified in this case so that we can independently pursue our fraud and other claims against Liberty National, Torchmark, and their agents.

ARMBRECHT, JACKSON, DeMOUY,
CROWE, HOLMES & REEVES
P. O. Box 290
Mobile, AL 36601
(205) 432-6751

By: /s/ W. Boyd Reeves
W. BOYD REEVES

By: /s/ Norman E. Waldrop, Jr.
NORMAN E. WALDROP, JR.

By: /s/ M. Kathleen Miller
M. KATHLEEN MILLER

Attorneys for Objectors

CERTIFICATE OF SERVICE

I hereby certify that I have on this the 8th day of October, 1993, served a copy of the foregoing pleading upon:

Jere L. Beasley, Esquire
Beasley, Wilson, Allen, Main & Crow, P.C.
207 Montgomery Street
10th Floor Bell Building
Montgomery, Alabama 36104

James W. Gewin, Esquire
Bradley, Arant, Rose & White
1400 Park Place Tower
2001 Park Place
Birmingham, Alabama 35203

by depositing a copy of same in the United States mail, properly addressed and postage prepaid.

/s/ M. Kathleen Miller

IN THE CIRCUIT COURT
OF BARBOUR COUNTY, ALABAMA
CLAYTON DIVISION

CHARLES FRANK ROBERTSON,	:	
for himself and in his	:	
representative capacity for the	:	
class of persons described herein,	:	CASE NUMBER
Plaintiff,	:	CV-92-021
vs.	:	
LIBERTY NATIONAL	:	
INSURANCE COMPANY,	:	
Defendant.	:	

OBJECTION TO CLASS CERTIFICATION, CLASS
NOTICE, DENIAL OF DISCOVERY, ISSUANCE OF
INJUNCTION AND CLASS SETTLEMENT, AND
ALTERNATIVE REQUEST TO OPT OUT OF CLASS

I hereby object to the Certification of a Rule 23(b)(3) class in this matter, to the denial of discovery sought by intervenors, to the injunction issued by this Court on June 16, 1993, to the Class Notice served in August, 1993, and to the fairness of the proposed class settlement, and I hereby give notice of my intention to appear and testify at the fairness hearing scheduled to commence on November 4, 1993. Alternatively, I request that the Court permit me to opt out of the class heretofore certified in this litigation so that I can independently pursue my claims against the defendant and others for their fraud and other misconduct. My objection and alternative request are based upon the following:

1. I was insured under a cancer policy ("Old Policy") that was issued by Liberty National on or before August 29, 1986, and that provided benefits for radiation, chemotherapy, prescription chemotherapy drugs, and other out-of-hospital prescription drugs without monetary limits, and it was paid and in force (or in the grace period) on or after August 29, 1986. I was not a named plaintiff in any lawsuit against Liberty National filed on or before March 10, 1993 alleging fraud, concealment, failure to disclose or misrepresentation in connection with the purchase, sale, issuance, exchange or replacement of any one or more Liberty National Cancer insurance policies. My "old policy" did not lapse prior to August 29, 1986. My first Liberty National cancer policy was not a new policy form issued after August 29, 1986. The issue date of my Liberty National Old Policy was May 17, 1976. I was thereafter induced to replace this policy with a new Liberty National cancer policy ("New Policy"), which became effective on August 1, 1988. I was induced to agree to this replacement (i) by misrepresentation that the New Policy was better than the Old Policy, (ii) by the suppression of the fact that the New Policy contained substantial limitations upon expenses incurred for chemotherapy, radiation therapy, prescription chemotherapy drugs, and other out-of-hospital prescription drugs, (iii) by an incomplete, inaccurate and misleading comparison of the terms, conditions or benefits contained in the Old Policy and the New Policy; and/or (iv) by misrepresentations that the Old Policy was no longer available and that I was required to switch to the New Policy. I understand that the misrepresentation made to

me were part of a pattern of intentional wrongful conduct carried out by Liberty National and others.

2. The class was improperly certified in this case because the claims of Charlie Frank Robertson are not typical of the claims of the other class members.

3. The class was improperly certified in this case because the claims of Charlie Frank Robertson are not common to all class members.

4. The class was improperly certified in this case because Charlie Frank Robertson is not an adequate representative of the interests of class members.

5. The class was improperly certified because the requirements of Rule 23(a), Alabama Rules of Civil Procedure, have not been shown to have been met.

6. The class was improperly certified because this action, and/or the claims Class Counsel have attempted to compromise, are not primarily injunctive in nature.

7. The class was improperly certified because the party "opposing" the class, defendant, and other parties proposed to be exculpated by the proposed settlement herein, have not acted or refused to act on grounds generally applicable to the class.

8. In support of my position that the class should not be certified, the settlement should not be approved and that I should be allowed to opt out of the class I adopt by reference all grounds set forth in sections A, B and C of the Intervention Petition and Motion to Amend Intervention Petition filed with this Court and served on counsel of record on June 10, 1993 and June 25, 1993, respectively, as additional grounds for this pleading.

9. Class Counsel have not acted in the best interests of the class members, they represent class members who have different and conflicting interests, have not acted competently in respect of the interests of the class members, and have otherwise not adequately represented the best interests of the class members.

10. Class Counsel participated in the defining of the class in such a fashion as to permit them to file independent fraud suits for certain of their clients against Liberty National (*i.e.*, suits filed on or before May 10, 1993 are not precluded by the class action), providing those clients with the equivalent of "opt-out" rights not provided to the remainder of the class. Those clients then elected (through their counsel) to opt-out by filing suits against Liberty National on or before March 10, 1993. Although some of these claims were later dismissed without prejudice, the filing of such action afforded all such plaintiffs a right to elect to opt into or out of the class, a right not enjoyed by other class members. Some such claims remain pending, and the dismissed claims may have been settled. Such action constitutes an acknowledgment that pursuit of individual claims, not participation in the class action and its proposed settlement, is in the best interests of class members.

11. The class notice approved by the Court and sent to class members is misleading, inadequate and insufficient. The notice contains misstatements/mischaracterizations of fact, mischaracterizations of the litigation and its background, mischaracterizations of the benefits of the settlement to class members, omissions of material facts, and insufficient information to afford class members a

basis upon which to evaluate the fairness of the settlement in light of all circumstances. The notice is incomprehensible to the average reader to whom it is directed. The notice is procedurally deficient because it was not designed to be distributed in a manner most likely to reach most class members. The class notice was designed to reach a few class members as possible, and to elicit as few objections or inquiries as possible from the class members that it did reach, all in the interest of preserving the proposed settlement against attack by class members. Moreover, the grounds for reconsideration and objections set forth in the "Amended Motion For Reconsideration of August 3, 1933 [sic] Order Approving Printed Notice, Summary Notice, And Their Distribution And Publication" heretofore filed with this Court and served on counsel to this case on August 19, 1993 are adopted by reference as additional grounds for this pleading.

12. The class certification and class settlement are premature because insufficient discovery has been allowed by the Court as to the lawsuit merits, as to the propriety of class certification, as to the adequacy of the representation of the class by Class Counsel and the Class Representative, and as to the value and fairness of the settlement to the class members.

13. The class settlement should not be approved because Class Counsel, at the time such settlement was negotiated, represented certain individual policyholders and had sued Liberty National for fraud in connection with its cancer exchange program. Accordingly, Class Counsel may have been interested in insuring that Liberty National reserved sufficient assets and liquidity to

satisfy and judgment or settlement in favor of those individual policyholders. Moreover, Class Counsel may have been interested in a class settlement that committed as little of Liberty National's assets as possible.

14. The class settlement ought not be approved because it provides inadequate monetary recovery to that sub-class of policyholders who have had cancer claims and provides for a measure of recovery that is inconsistent with law.

15. The class settlement ought not be approved because it provides no monetary recovery for the sub-class of cancer policyholders who have not had cancer, despite requiring them to release their fraud claims.

16. The class settlement ought not be approved because it treats class members differently than those policyholders who would be class members but for the fact that they filed suit on or before March 10, 1993, thus denying class members equal protection, equal treatment and other statutory, common law, and constitutional rights.

17. The class settlement ought not be approved because it requires that all class members release all claims against Liberty National, Torchmark, their agents and others without adequate compensation and denies all class members their right to due process, a jury trial and other statutory, common law and constitutional rights by forcing them to accept the settlement proposal without any right to opt-out of the class.

18. The class settlement ought not be approved because the discovery and settlement negotiations were

not conducted in a genuine, hard-fought, arms-length manner.

19. The class settlement ought not be approved because Class Counsel have refused class members access to information and have objected to and impeded the efforts of class members to secure discovery of information bearing upon the fairness of the settlement, the propriety of the certification of the class, and the adequacy of the representation of the class, and they have otherwise taken action contrary to the best interests of class members.

20. The class settlement ought not be approved because the amount of the settlement to be paid by Liberty National to class members is grossly unfair and insufficient, particularly in light of the compensatory damages suffered by the class members and the nature and extent of the scheme to trick and defraud that Liberty National practiced on 380,000 policyholders. Liberty National is to be relieved of substantial fraud claims and damage liability for a nominal sum per fraudulent misrepresentation, and for no monetary compensation whatsoever for most class members.

21. The class settlement ought not be approved because the monetary relief awarded does not sufficiently punish Liberty National for its massive scheme to trick and defraud its cancer policyholders. The \$4 million contribution by Liberty National to settle 380,000 potential fraud claims amounts to the equivalent of one weeks' interest income for Liberty National, according to its annual report for 1992. Such contribution will not adequately punish a corporation with \$2.4 billion in assets

(or deter others); nor would it adequately deter or punish Liberty National's parent corporation, which reported net income in excess of \$78 million in the second quarter of 1993.

22. The class settlement ought not be approved, because of the volume and nature of the objections interposed by class members.

23. The class settlement ought not be approved, because it fails to reasonably take into account the likelihood that the class and/or the individual class members would succeed on the merits of their individual cases, and the likely value of such success.

24. Liberty National has agreed not to object to payment of fees to Class Counsel in the amount of \$4.5 million. Objection is made to any award of attorney's fees without the necessary and proper foundation and proof. Moreover, objection is made to the said agreement not to object for the reason that, *inter alia*, Liberty National's said promise cannot avoid having the tendency to induce Class Counsel to support the settlement; to the contrary, fees for Class Counsel should be set according to law after the fact.

25. The class settlement ought not be approved, because it requires the exculpation from liability of numerous potential defendants even though:

- (a) Such proposed releasees are not parties to this action and never were;
- (b) No discovery has been allowed from, or even about, such proposed releasees and neither Class Counsel nor the Court has any basis to evaluate the enormity of any

wrongs committed by, or the solvency of, any such proposed releasees;

- (c) No consideration has been or will be given by any of such proposed releasees for the valuable benefit of receiving compulsory general releases of not less than 380,000 causes of action in tort.

26. The Court should not award attorney's fees to Class Counsel, because discovery regarding those fees has been denied, and Class Counsel have not notified class members of any basis for any fee request and have thereby deprived class members of information upon which to evaluate such a request. The submission to be made by Class Counsel three days prior to the November 4, 1993 hearing will come too late to afford class members an adequate opportunity to receive, analyze, and respond to that information prior to the hearing.

27. The class settlement ought not be approved and the class should be decertified, because the discovery undertaken by Class Counsel (and the discovery allowed to be conducted by Intervenor) is inadequate to ascertain: (a) whether or not the class should be certified and if so whether it should be certified as a 23(b)(2) class; (b) whether or not Class Counsel and the Class Representative has adequately represented and protected the interests of the class and the individual class members; (c) whether or not the settlement is fair, adequate, reasonable and in the best interests of the class and the individual class members; (d) the likelihood of success on the merits, and the value of the individual claims of class members; (e) what discovery previously was undertaken in the

case, and what such discovery revealed; (f) the negotiations leading up to the settlement; (g) the extent to which the negotiations and discovery previously conducted were hard-fought, arms-length, and in good faith and comprehensive; (h) the likelihood of success on the merits; (i) the nature and scope of the fraud practiced by Liberty National; (j) the amounts paid by Liberty National to settle (or satisfy judgment in) other similar cases; and (k) the facts bearing upon the other issues as to which Intervenor sought discovery but were denied same.

28. The discovery that was ordered to be produced by Class Counsel in the form of documents and deposition transcripts was so conditioned by the Protective Order issued on September 9, 1993 as to unduly, unnecessarily, illegally and unconstitutionally hamper and restrict my counsel in his communications with me, in his representation of me and in his development of the facts and witnesses necessary to a fair and adequate development and presentation of the facts bearing on the issues presented in these proceedings. Moreover, I adopt by reference the grounds set forth in the "Objections To Protective Order Proposed By Liberty National And Motion To Enter Alternative Confidentiality Order" filed with the Court and served on counsel of record on September 1, 1993 as additional grounds for this pleading.

29. I do not wish to have my claims against Liberty National adjudicated in this class action. I specifically request that the Court permit me to opt out of this class pursuant to the Court's authority under Rule 23(d) of the *Alabama Rules of Civil Procedure*. I have been substantially damaged as a result of Liberty National's massive scheme

to trick and defraud its cancer policyholders. I have lost money by paying increased premiums for coverage that was not as good as it was represented to be. I never would have paid these higher premiums if Liberty National had not misrepresented the quality of the coverage, suppressed the limitations on the coverage, misrepresented the true facts by misleading, inaccurate and incomplete comparison of the two policies, and/or represented to me that I had no choice but to drop the old policy and take out the new one. I may now face the prospect of not being able to procure adequate cancer coverage elsewhere or incurring additional expense to procure cancer coverage from another insurer to replace the inadequate coverage fraudulently sold to me. I have suffered mental anguish and emotional distress at this prospect and at the prospect of incurring expenses for the treatment of cancer that were represented to be, but are not, covered by my cancer policy. I am not interested in continuing as an insured of Liberty National under a "reformed" cancer policy; rather, I wish to present my fraud case to jury and ask the jury to award me compensatory and punitive damages against Liberty National, Torchmark, and their agents. I am willing to accept the risk of failure of such claims before a jury. I believe that the verdict in such a case would be substantial; I am willing to accept the risk that the verdict in such a case might be very small or nothing at all. I believe the class settlement is a colossal effort by Liberty National to avoid the risk of a large number of such lawsuits, but I do not believe that the class relief offered by Liberty National can be constitutionally imposed on me under the circumstances.

30. I do not wish to present claims against Liberty National for declaratory or injunctive relief. Accordingly, I make the alternative averment (and wish to preserve the position) that I am not a member of the class as defined in this Court's March 10, 1993 Order and its later clarification of that class definition, said clarification having been issued by this Court on June 16, 1993.

31. I adopt by reference the grounds set forth in support of the "Motion For Relief From And/Or Clarification Of Order With Respect To Proposed Settlement" filed with this Court and served on counsel of record on June 25, 1993, as grounds for this pleading, including my positions stated herein: (a) that the class should not be certified; (b) that the injunction previously issued by the Court was improper and unconstitutional; (c) that the class settlement should not be approved; and (d) that I should be allowed to opt-out of the class.

32. I object to the reliance upon equitable remedies in the designation of the class and in the settlement of the claims, inasmuch as each class member has an adequate remedy at law.

33. I also hereby give notice of my intention to appear and testify in these proceedings in order to fully and completely voice my objection and state my position in person.

34. I adopt every objection and every ground for objection filed or submitted by any other objector in respect of the proposed settlement of this, and in respect of the effort to resolve this on a class basis.

35. A true and complete copy of my affidavit is attached hereto as Exhibit "A".

WHEREFORE, I object to the certification of any class; I object to the certification of a Rule 23(b)(2) class; I object to the sufficiency of the class notice issued in this case; I object to the denial of discovery in this case; I object to the injunction issued in this case; I object to the class settlement proposed in this case; and I request that the Court permit me to opt out of the class certified in this case so that I can independently pursue my fraud and other claims against Liberty National, Torchmark, and their agents.

/s/ Lillie N. Chunn
LILLIE N. CHUNN,
OBJECTOR

/s/ Bill Roedder
WILLIAM C. ROEDDER
W. ALEXANDER MOSELEY
GEORGE M. WALKER
Attorneys for Objector

OF COUNSEL:

HAND, ARENDALL, BEDSOLE,
GREAVES & JOHNSTON
3000 First National Bank Building
Post Office Box 123
Mobile, Alabama 36601
(205) 432-5511

CERTIFICATE OF SERVICE

I hereby certify that I have served a copy of the foregoing on each of the following by mailing a copy of

the same by United States mail, postage prepaid and properly addressed, on this day, 8th Oct. 1993.

/s/ Bill Roedder

COUNSEL OF RECORD:

Jere L. Beasley, Esquire
Beasley, Wilson, Allen, Main
& Crow, P.C.
207 Montgomery Street
10th Floor Bell Bldg.
Montgomery, Alabama 36104

James W. Gewin, Esquire
Bradley, Arant, Rose & White
1400 Park Place Tower
2001 Park Place
Birmingham, Alabama 35203

EXHIBIT A

IN THE CIRCUIT COURT
OF BARBOUR COUNTY, ALABAMA
Clayton Division

CHARLIE FRANK ROBERTSON,	:	
for himself and in his	:	
representative capacity for the	:	
class of persons described herein,	:	CASE NO.
Plaintiff,	:	CV-92-021
vs.	:	
LIBERTY NATIONAL LIFE	:	
INSURANCE COMPANY,	:	
Defendant.	:	

AFFIDAVIT

STATE OF ALABAMA)

COUNTY OF MOBILE)

BEFORE ME, the undersigned notary public in and for said county and state, personally appeared Lillie N. Chunn, who, being known to me and being by me first duly sworn, did depose and say the following:

1. My name is Lillie N. Chunn, and I reside in Malcolm, Alabama. I am seventy three (73) years old and competent to make this affidavit. I have a ninth grade education, and I am the owner and proprietor of Bate's Bait Shop. I have no work experience in the insurance industry. The following information is based on my personal knowledge except to the extent indicated.

2. I have retained the law firm of Hand, Arendall, Bedsole, Greaves & Johnston to represent me with my claim against Liberty National Life Insurance Company ("Liberty National"), Liberty National sales agent, Robert B. Evans ("Evans"), and others.

3. In or about July, 1988, Mr. Evans contacted me about my old Liberty National cancer policy and a new Liberty National cancer policy. Mr. Evans made oral misrepresentations to me concerning the coverage under these policies, and he failed to disclose considerable important information about the coverages. In reliance on those misrepresentations and non-disclosures, I purchased the new Liberty National cancer policy. I had to pay higher premiums under the new policy and did so based on the misrepresentations and non-disclosures. My premiums have further increased since that time.

4. As regards all of the cancer insurance I have taken out with Liberty National, I have done so because of the fear of having to pay high medical bills with my limited financial resources. I have relied and depended on Liberty National to be a reputable company and to deal with me fairly and honestly. I was extremely disturbed and distressed to learn that I was misled, and that I no longer have the type of cancer coverage that my old policy provided.

5. I now understand that I may be a member of a mandatory class in the class action filed against Liberty National in Barbour County, Case No. CV-92-021. ("Barbour County Litigation").

6. I further understand that I am enjoined and prohibited from commencing or prosecuting any action, in any capacity, asserting any claims which are proposed to be released pursuant to the proposed settlement in the Barbour County Litigation.

7. I did not receive the papers entitled Notice of the Pendency of Action, Class Action Determination, Settlement and Settlement Hearing of the Barbour County Litigation in the mail from Liberty National. However, I did obtain a copy of these papers from my Hand, Arendall attorney. I have tried to read them but I have no idea of the message that these papers intend to convey.

8. Class Counsel in the Barbour County Litigation have never contacted me to consult with me regarding the proposed settlement. Nor have they contacted me about the injunction proceedings. They have never asked me about my claims against Liberty National, the damage that I have suffered, the actions that I have taken in

reliance on the oral representations that were made to me by Mr. Evans, or the circumstances of those representations. In fact, Class Counsel have not contacted me at any time about any thing.

9. I do not want to be a party to or to be bound by the settlement agreement proposed by Class Counsel and counsel for Liberty National. Nor do I want to be represented by Class Counsel. I want to seek compensatory and punitive damages in my own independent action, against Mr. Evans, Liberty National, and others, in a forum that is proper and convenient for me. Through my own counsel, I want to pursue my claim in Mobile County, and I want my case to be heard by a jury.

Further deponent sayeth not.

/s/ Lillie N. Chunn
Lillie N. Chunn

Sworn to and subscribed before me this 24th day of September, 1993.

/s/ Lynn O. Binet
NOTARY PUBLIC
My Commission expires:
10-16-95

IN THE CIRCUIT COURT FOR
BARBOUR COUNTY, ALABAMA
Clayton Division

CHARLIE FRANK ROBERTSON, *
for himself, and in his *
representative capacity for the *
class of persons described herein, *
Plaintiff, *

vs. *

LIBERTY NATIONAL LIFE *
INSURANCE COMPANY, *
Defendant. *

CASE NO.
CV-92-021

OBJECTION TO CLASS CERTIFICATION, CLASS
NOTICE, DENIAL OF DISCOVERY, ISSUANCE OF
INJUNCTION AND CLASS SETTLEMENT, AND
ALTERNATIVE REQUEST TO OPT OUT OF CLASS

(Filed October 8, 1993)

I/We hereby object to the Certification of a Rule 23(b)(3) class in this matter, to the denial of discovery sought by intervenors, to the injunction issued by this Court on June 16, 1993, to the Class Notice served on or about August 15, 1993, and to the fairness of the proposed class settlement, and I/We hereby give notice of my/our intention to appear and testify at the fairness hearing scheduled to commence on November 4, 1993. Alternatively, I/we request that the Court permit me/us to opt out of the class heretofore certified in this litigation so that I/we can independently pursue my/our claims against the defendant and others for their fraud and

other misconduct. My/our objection and alternative request are based upon the following:

1. I/We (were) was insured under a cancer policy ("Old Policy") that was issued by Liberty National on or before August 29, 1986, and that provided benefits for radiation, chemotherapy, prescription chemotherapy drugs, and other out-of-hospital prescription drugs without monetary limits, and was paid and in force (or in the grace period) on or after August 29, 1986. I/We (were) was not a named plaintiff in any lawsuit against Liberty National filed on or before March 10, 1993 alleging fraud, concealment, failure to disclose or misrepresentation in connection with the purchase, sale, issuance, exchange or replacement of any one or more Liberty National cancer insurance policies. My/Our "old policy" did not lapse prior to August 29, 1986. My/Our first Liberty National cancer policy was not a new policy form issued after August 29, 1986. The issue date of my Liberty National Old Policy was prior to August 29, 1986. I/We (were) was thereafter induced to replace this policy with a new Liberty National cancer policy ("New Policy"), which became effective after August 29, 1986. I/We (were) was induced to agree to this replacement (i) by misrepresentation that the New Policy was better than the Old Policy, (ii) by the suppression of the fact that the New Policy contained substantial limitations upon expenses incurred for chemotherapy, radiation therapy, prescription chemotherapy drugs, and other out-of-hospital prescription drugs, (iii) by an incomplete, inaccurate and misleading comparison of the terms, conditions or benefits contained in the Old Policy and the New Policy; and/or (iv) by misrepresentations that the Old Policy was no longer

available and that I/we (were) was required to switch to the New Policy. I/We understand that the misrepresentations made to me/us (were) was part of a pattern of intentional wrongful conduct carried out by Liberty National and others.

2. The class was improperly certified in this case because the claims of Charlie Frank Robertson are not typical of the claims of the other class members.

3. The class was improperly certified in this case because the claims of Charlie Frank Robertson are not common to all class members.

4. The class was improperly certified in this case because Charlie Frank Robertson is not an adequate representative of the interests of class members.

5. The class was improperly certified because the requirements of Rule 23(a), Alabama Rules of Civil Procedure, have not been shown to have been met.

6. The class was improperly certified because this action, and/or the claims Class Council [sic] have attempted to compromise, are not primarily injunctive in nature.

7. The class was improperly certified because the party "opposing" the class, defendant, and other parties proposed to be exculpated by the proposed settlement herein, have not acted or refused to act on grounds generally applicable to this class.

8. In support of my/our position that the class should not be certified, the settlement should not be approved and that I/we should be allowed too [sic] opt out of the class I/we adopt by reference all grounds set

forth in sections A, B and C of the Intervention Petition and Motion to Amend Intervention Petition filed with this Court and served on counsel of record on June 10, 1993 and June 25, 1993, respectively, as additional grounds for this pleading.

9. Class Counsel have not acted in the best interests of the class members, they represent class members who have different and conflicting interests, have not acted competently in respect of the interests of the class members, and have otherwise not adequately represented the best interests of the class members.

10. Class Counsel participated in the defining of the class in such a fashion as to permit them to file independent fraud suits for certain of their clients against Liberty National (*i.e.*, suits filed on or before March 10, 1993 are not precluded by the class action), providing those clients with the equivalent of "opt-out" rights not provided to the remainder of the class. Those clients then elected (through their counsel) to opt-out by filing suits against Liberty National on or before March 10, 1993. Although some of these claims were later dismissed without prejudice, the filing of such action afforded all such plaintiffs a right to elect to opt into or out of the class, a right not enjoyed by other class members. Some such claims remain pending, and the dismissed claims may have been settled. Pertinent parts of these records will be submitted to the Court. Such action constitutes an acknowledgment that pursuit of individual claims, not participation in the class action and its proposed settlement, is in the best interests of class members.

11. The class notice approved by the Court and sent to class members is misleading, inadequate and insufficient. The notice contains misstatements/mischaracterizations of fact, mischaracterizations of the litigation and it's [sic] background, mischaracterizations of the benefits of the settlement to class members, omissions of material facts, and insufficient information to afford class members a basis upon which to evaluate the fairness of the settlement in light of all circumstances. The notice is incomprehensible to the average reader to whom it is directed. The notice is procedurally deficient because it was not designed to be distributed in a manner most likely to reach most class members. The class notice was designed to reach as few class members as possible, and to elicit as few objections or inquiries as possible from the class members that it did reach, all in the interest of preserving the proposed settlement against attack by class members. Moreover, the grounds for reconsideration and objections set forth in the "Amended Motion For Reconsideration Of August 3, 1993 Order Approving Printed Notice, Summary Notice, And Their Distribution And Publication" heretofore filed with this Court and served on counsel to this case on August 19, 1993 are adopted by reference as additional grounds for this pleading.

12. The class certification and class settlement are premature because insufficient discovery has been allowed by the Court as to the lawsuit merits, as to the propriety of class certification, as to the adequacy of the representation of the class by Class Counsel and the Class Representative, and as to the value and fairness of the settlement to the class members.

13. The class settlement should not be approved because Class Counsel, at the time such settlement was negotiated, represented certain individual policyholders and had sued Liberty National for fraud in connection with its cancer exchange program. Accordingly, Class Counsel may have been interested in insuring that Liberty National reserved sufficient assets and liquidity to satisfy any judgment or settlement in favor of those individual policyholders. Moreover, Class Counsel may have been interested in a class settlement that committed as little of Liberty National's assets as possible.

14. The class settlement ought not be approved because it provides inadequate monetary recovery to that sub-class of policyholders who have had cancer claims and provides for a measure of recovery that is inconsistent with law.

15. The class settlement ought not be approved because it provides no monetary recovery for the sub-class of cancer policyholders who have not had cancer, despite requiring them to release their fraud claims.

16. The class settlement ought not be approved because it treats class members differently than those policyholders who would be class members but for the fact that they filed suit on or before March 10, 1993, thus denying class members equal protection, equal treatment and other statutory, common law, and constitutional rights.

17. The class settlement ought not be approved because it requires that all class members release all claims against Liberty National, Torchmark, their agents and others without adequate compensation and denies all

class members their right to due process, a jury trial and other statutory, common law and constitutional rights by forcing them to accept the settlement proposal without any right to opt-out of the class.

18. The class settlement ought not be approved because the discovery and settlement negotiations were not conducted in a genuine, hard-fought, arms-length manner.

19. The class settlement ought not be approved because Class Counsel have refused class members access to information and have objected to and impeded the efforts of class members to secure discovery of information bearing upon the fairness of the settlement, the propriety of the certification of the class, and the adequacy of the representation of the class, and they have otherwise taken action contrary to the best interests of class members.

20. The class settlement ought not be approved because the amount of the settlement to be paid by Liberty National to class members is grossly unfair and insufficient, particularly in light of the compensatory damages suffered by the class members and the nature and extent of the scheme to trick and defraud that Liberty National practiced on 380,000 policyholders. Liberty National is to be relieved of substantial fraud claims and damage liability for a nominal sum per fraudulent misrepresentation, and for no monetary compensation whatsoever for most class members.

21. The class settlement ought not be approved because the monetary relief awarded does not sufficiently punish Liberty National for its massive scheme to trick

and defraud its cancer policyholders. The \$4 million contribution by Liberty National to settle 380,000 potential fraud claims amounts to the equivalent of one weeks' interest income for Liberty National, according to its annual report for 1992. Such contribution will not adequately punish a corporation with \$2.4 billion in assets (or deter others); nor would it adequately deter others or punish Liberty National's parent corporation, which reported net income in excess of \$78 million in the second quarter of 1993. Pertinent parts of these records will be submitted to the Court.

22. The class settlement ought not be approved, because of the volume and nature of the objections interposed by class members.

23. The class settlement ought not be approved, because it fails to reasonably take into account the likelihood that the class and/or the individual class members would succeed on the merits of their individual cases, and the likely value of such success.

24. Liberty National has agreed not to object to payment of fees to Class Counsel in the amount of \$4.5 million. Objection is made to any award of attorney's fees without the necessary and proper foundation and proof. Moreover, objection is made to the said agreement not to object for the reason that, inter alia, Liberty National's said promise cannot avoid having the tendency to induce Class Counsel to support the settlement; to the contrary, fees for Class Counsel should be set according to law after the fact.

25. The class settlement ought not be approved, because it requires the exculpation from liability of numerous potential defendants even though:

- (a) Such proposed releasees are not parties to this action and never were;
- (b) No discovery has been allowed from, or even about, such proposed releasees and neither Class Counsel nor the Court has any basis to evaluate the enormity of any wrongs committed by, or the solvency of, any such proposed releasees;
- (c) No consideration has been or will be given by any of such proposed releasees for the valuable benefit of receiving compulsory general releases of not less than 380,000 causes of action in tort.

26. The Court should not award attorney's fees to Class Counsel, because discovery regarding those fees has been denied, and Class Counsel have not notified class members of any basis for any fee request and have thereby deprived class members of information upon which to evaluate such a request. The submission to be made by Class Counsel three days prior to the November 4, 1993 hearing will come too late to afford class members an adequate opportunity to receive, analyze, and respond to that information prior to the hearing.

27. The class settlement ought not be approved and the class should be decertified, because the discovery undertaken by Class Counsel (and the discovery allowed to be conducted by Intervenor) is inadequate to ascertain: (a) whether or not the class should be certified and if so whether it should be certified as a 23(b)(2) class; (b)

whether or not Class Counsel and the Class Representative has [sic] adequately represented and protected the interests of the class and the individual class members; (c) whether or not the settlement is fair, adequate, reasonable and in the best interests of the class and the individual class members; (d) the likelihood of success on the merits, and the value of the individual claims of class members; (e) what discovery previously was undertaken in the case, and what such discovery revealed; (f) the negotiations leading up to the settlement; (g) the extent to which the negotiations and discovery previously conducted were hard-fought, arms-length, and in good faith and comprehensive; (h) the likelihood of success on the merits; (i) the nature and scope of the fraud practiced by Liberty National; (j) the amounts paid by Liberty National to settle (or satisfy judgment in) other similar cases; and (k) the facts bearing upon the other issues as to which Intervenor sought discovery but were denied same.

28. The discovery that was ordered to be produced by Class Counsel in the form of documents and deposition transcripts was so conditioned by the Protective Order issued on September 9, 1993 as to unduly, unnecessarily, illegally and unconstitutionally hamper and restrict my/our counsel in his communications with me, in his representation of me and in his development of the facts and witnesses necessary to a fair and adequate development and presentation of the facts bearing on the issues presented in these proceedings. Moreover, I/we adopt by reference the grounds set forth in the "Objections To Protective Order Proposed By Liberty National And Motion To Enter Alternative Confidentiality Order"

filed with the Court and served on counsel of record on September 1, 1993 as additional grounds for this pleading.

29. I/We (are) am a resident(s) of the State of Mississippi and I/we contest the jurisdiction of this Alabama court, and this venue, to bind me/us. The misrepresentations were made to me/us in Mississippi, and the policy was delivered to me/us in Mississippi. Liberty National could not use the class action vehicle in Mississippi because class actions are not recognized under Mississippi law. Therefore, Liberty National cannot obtain the release of my/our claims by an Alabama class action.

30. I/We do not wish to have my/our claims against Liberty National adjudicated in this class action. I/We specifically request that the Court permit me/us to opt out of this class pursuant to the Court's authority under Rule 23(d) of the *Alabama Rules of Civil Procedure*. I/We have been substantially damaged as a result of Liberty National's massive scheme to trick and defraud its cancer policyholders. I/We have lost money by paying increased premiums for coverage that was not as good as it was represented to be. I/We never would have paid these higher premiums if Liberty National had not misrepresented the quality of the coverage, suppressed the limitations on the coverage, misrepresented the true facts by misleading, inaccurate and incomplete comparison of the two policies, and/or represented to me/us that I/we had no choice but to drop the old policy and take out the new one. I/We may now face the prospect of not being able to procure adequate cancer coverage elsewhere or incurring additional expense to procure cancer coverage from another insurer to replace the inadequate coverage

fraudulently sold to me/us. I/We have suffered mental anguish and emotional distress at this prospect and at the prospect of incurring expenses for the treatment of cancer that were represented to be, but are not, covered by my/our cancer policy. I/We (are) am not interested in continuing as an insured of Liberty National under a "reformed" cancer policy; rather, I/we wish to present my/our fraud case to a jury and ask the jury to award me/us compensatory and punitive damages against Liberty National, Torchmark, and their agents. I/We (are) am willing to accept the risk of failure of such claims before a jury. I/We believe that the verdict in such a case would be substantial; I/We (are) am willing to accept the risk that the verdict in such a case might be very small or nothing at all. I/We believe the class settlement is a colossal effort by Liberty National to avoid the risk of a large number of such lawsuits, but I/we do not believe that the class relief offered by Liberty National can be constitutionally imposed on me/us under the circumstances.

31. I/We do not wish to present claims against Liberty National for declaratory or injunctive relief. Accordingly, I/we make the alternative averment (and wish to preserve the position) that I/we (are) am not a member of the class as defined in this Court's March 10, 1993 Order and its later clarification of that class definition, said clarification having been issued by this Court on June 16, 1993.

32. I/We adopt by reference the grounds set forth in support of the "Motion For Relief From And/Or Clarification Of Order With Respect To Proposed Settlement"

filed with this Court and served on counsel of record on June 25, 1993, as grounds for this pleading, including my positions stated herein: (a) that the class should not be certified; (b) that the injunction previously issued by the Court was improper and unconstitutional; (c) that the class settlement should not be approved; and (d) that I/we should be allowed to opt-out of the class.

33. I/We also hereby give notice of my/our intention to appear and testify in these proceedings in order to fully and completely voice my/our objection and state my/our positions in person.

WHEREFORE, I/we object to the certification of any class, I/we object to the certification of a Rule 23(b)(2) class; I/we object to the sufficiency of the class notice issued in this case; I/we object to the denial of discovery in this case; I/we object to the injunction issued in this case; I/we object to the class settlement proposed in this case; and I/we request that the Court permit me/us to opt out of the class certified in this case so that I/we can independently pursue my/our own fraud and other claims against Liberty National, Torchmark, and their agents.

OBJECTOR

OBJECTOR

Sworn to and subscribed before
me this ____ day of ____, 1993.

NOTARY PUBLIC

/s/ John D. Richardson
JOHN D. RICHARDSON
DAVID F. DANIELL
Attorneys for Objectors
 David L. Lynd, Elizabeth S.
 Lynd, Pat DeSantis, Angela
 DeSantis, James V. Stowe,
 Wilanne S. Stowe, Juanita R.
 Stowe, Richard J. Hoss, Linda
 H. Hoss, Wesley R. Beech, Sr.,
 Margaret Beech, Donald
 Rayford Williams, Olga N.
 Williams, Mickie E. Ray,
 Willie J. Ray, Albert E. Ray,
 Cora Q. Ray, and Patrick Ray,
 Donald L. Allen, Mary J.
 Allen, William A. Barnes,
 Alma G. Barnes, Grace Bion-
 dolillo, Sallie M. Conway,
 Deborah M. Cox, Tommy R.
 Cox, Della M. Finlay, Lore M.
 Franklin, Douglas W. Howell,
 Daisy D. Howell, Lucille J.
 Jackson, Theodore W. Jock-
 isch, Francis L. Jockisch, Lois
 N. Klaas, Phillip Bruce Lump-
 kin, Gloria W. Lumpkin,
 Floyd J. Miller, Annie G. Mil-
 ler, James E. Mitchener, Sr.,
 Sally F. Mitchener, Hubert R.
 Odom, Catherine J. Odom,

Thomas Wayne Smith, Sue
 Ann Smith, Warren G. Stan-
 ley, Jr., Vicki H. Stanley,
 Norris F. Woodard, Lois M.
 Woodard, James E. Wooley,
 Linda C. Wooley, Ashton B.
 Cannon, Carolyn Cannon,
 Leslie C. Collings, Edna W.
 Collings, Lottie Trest, William
 C. Trest, William D. Knapp,
 Ruby Knapp, Ruby Walker,
 Jaime Phillips, Augustus L.
 Smith, Patricia L. Smith,
 Donald E. Smith, Karen K.
 Smith, David A. Rose, Sr.,
 Kay I. Rose, Essie Lee Taylor,
 Henry D. Whigham, Gloria
 Whigham, Ruby M. Taylor,
 Hiram R. Burge, William C.
 Smith, Jean M. Smith, Gail
 Pruitt, Bennie F. Baker,
 Gladys R. Baker, Julian Ted-
 der, Betty B. Tedder, Joann B.
 Voivedich, Raymond Guy,
 Deborah Guy, Wyone Guy,
 Charles R. Gilbert, Delores M.
 Gilbert, Susan Trest Price,
 Rayford Hinton, Jr., Judith C.
 Hinton, Robert Vanek, Telecia
 Paulk (f/n/a) Telecia Gibbs,
 James P. Cazalas, Sr., Brenda
 S. Cazalas, Leo C. Crain,
 Sandra E. Crain, William T.
 Beasley, Jesse M. Turner,
 Hugh F. McCoy, Byron D.
 Ray, Jr., Lynn M. Ray and Jo-
 seph H. Lofton.

OF COUNSEL:

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CERTIFICATE OF SERVICE

I do hereby certify that I have, on this 8 day of 1993, served a copy of the foregoing pleading on counsel of record for all parties to this proceeding, by placing same in the United States mail, properly addressed and first class postage.

/s/ John D. Richardson

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 Bradley, Arant, Rose & White
 1400 Park Place Tower
 2001 Park Place
 Birmingham, AL 35203

/s/ Lois M. Woodard
OBJECTOR

/s/ Norris F. Woodard
OBJECTOR

Sworn to and subscribed before
 me this 30 day of Sept., 1993.

/s/ Donald F. Byrd
NOTARY PUBLIC

NOTARY PUBLIC STATE OF
 MISSISSIPPI AT LARGE.
 MY COMMISSION EXPIRES:
 Jan. 13, 1996.
 BONDED THRU NOTARY
 PUBLIC UNDERWRITERS.

JOHN D. RICHARDSON
DAVID F. DANIELL
Attorneys for Objectors
 David L. Lynd, Elizabeth S. Lynd,
 Pat DeSantis, Angela DeSantis,
 James V. Stowe, Wilma S. Stowe,
 Juantia R. Stowe, Richard J. Hoss,
 Linda H. Hoss, Wesley R. Beech,
 Sr., Margaret Beech, Donald
 Rayford Williams, Olga N. Wil-
 liams, Mickie E. Ray, Willie J. Ray,
 Albert E. Ray, Cora Q. Ray, and
 Patrick Ray, Donald L. Allen,

IN THE CIRCUIT COURT FOR
BARBOUR COUNTY, ALABAMA
Clayton Division

CHARLIE FRANK ROBERTSON, *
for himself, and in his *
representative capacity for the *
class of persons described *
herein, *

CASE NO.
CF-92-021

Plaintiff, *

vs. *

LIBERTY NATIONAL LIFE *
INSURANCE COMPANY, *

Defendant. *

NOTICE OF OPT OUT

(Filed November 8, 1993)

Norris and Lois Woodard, resident citizens of the state of Mississippi, exercise their procedural due process rights set forth by the United States Supreme Court in *Phillips Petroleum Co. v. Shutts*, 472 U.S. 797, 86 L. Ed 688, 105 S. Ct. 2965 (1985) and opt out of this class action.

Respectfully submitted,
Norris Woodard and
Lois Woodard
BY ATTORNEYS FOR PLAINTIFFS

/s/ David F. Daniell
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CERTIFICATE OF SERVICE

I do hereby certify that I have, on this 5 day of Nov. , 1993, served a copy of the foregoing pleading on counsel of record for all parties to this proceeding, by placing same in the United States mail, properly addressed and first class postage.

/s/ David F Daniell

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IN THE CIRCUIT COURT
OF BARBOUR COUNTY, ALABAMA
CLAYTON DIVISON [sic]

CHARLIE FRANK ROBERTSON,)	
for himself, and in his)	
representative capacity for the)	
class of persons described herein,	)	CASE NO.
Plaintiff,	)	CV-92-021
)	
vs)	
)	
LIBERTY NATIONAL LIFE)	
INSURANCE COMPANY,)	
)	
Defendant.)	

MOTION TO OPT OUT OR, IN THE ALTERNATIVE,
OBJECTION TO CLASS CERTIFICATION
AND/OR THE PROPOSED SETTLEMENT

(Filed January 19, 1994)

The following individuals, who own Liberty National cancer policies, file their Motion to Opt Out or, in the Alternative, Objection to Class Certification and/or the Proposed Class Settlement, as follows:

1. This motion is brought on behalf of the following Liberty National cancer policy holders: **Glenn and Margie Perkins**.
2. The foregoing, for whom this motion and objection is brought, are hereinafter referred to as either "Movants" or "Objectors".
3. In the late 1970s and early 1980s, Liberty National issued cancer insurance policies (hereinafter "old policies") to Movants which were guaranteed annual renewable and which provided unlimited coverage for

radiation, chemotherapy, prescription chemotherapy drugs, and other out of hospital prescription drugs. Defendant thereafter induced Movants to replace their cancer policies with a new type of policy by misrepresentations that the new policy was better than the old; by concealment of facts that the new policy reduced the benefits available for radiation, chemotherapy, prescription chemotherapy drugs, and other out of hospital drugs; by incomplete, inaccurate and misleading comparisons of the terms, conditions or benefits in the old policy and the new policy; and/or by misrepresentations that the old policy was no longer available and they were required to switch to the new policy.

4. Movants hereby move to opt out of the class and object to this 23(b)(2) class action as presently framed without an opt out provision on the grounds that it is in violation of Movants' constitutional rights to due process, trial by jury, access to the Courts, and the proposed settlement is unfair, unreasonable, and inadequate to compensate Movants for their injuries suffered at the hands of the Defendant.

5. The certification of this action pursuant to ARCP 23(b)(2) without a right to opt out is a violation of the Movants' constitutional right to trial by a jury for their damage claims particularly where, as here, the appropriate relief for the Defendant's fraudulent and deceptive conduct of switching cancer policies concerns money and money damages, not equitable relief. The measure of recovery in the class certification order and under the proposed settlement is inconsistent with settled law. The class settlement wholly abandons substantial damage claims. Pursuant to the settlement, Movants will not

receive any monetary relief yet they are required to release their fraud claims against the Defendant.

6. Movants have suffered monetary damages consisting of, among other things, paying an excessive premium for an inferior policy, loss [sic] the time value of money paid in increased premiums, loss of the opportunity to obtain insurance with unlimited benefits for radiation, chemotherapy and other drug treatment on the basis of their classification and age at the time of the issue of the original policy, and mental anguish which will vary with each Movant.

7. Movants are constitutionally entitled to notice and an opportunity to opt out as a minimum requirement of due process in order to pursue their uniquely individual damage claims which will vary from Movant to Movant depending upon the time they were covered under a new policy, and the mental anguish of being defrauded and manipulated by the Defendant.

8. The class action as certified denies Movants their constitutional right to trial by jury on the claims for fraud and fraudulent concealment. Movants have a constitutional right to trial by jury which cannot and should not be eliminated by this Court's certification of the class without a right to opt out, or a settlement binding upon the Movants and to which the Movants object.

9. Movants also object to this Court's injunction of June 16, 1993, which upon information and belief was issued without a motion, without a hearing and without notice.

10. As an additional reason the proposed settlement affords inadequate relief (ie [sic], in addition to the fact that the Movants receive no money damages), the sole relief afforded to Movants would be to reinstate a reformed policy which would simply provide the Defendant more opportunity to defraud the Movants. The notice provides that premiums on the reformed policies will be frozen by the Court for less than one year, leaving the Defendant free to again charge class members with an excessive premium thereafter. The Defendants engaged in fraudulent switching of cancer policies solely for profit which has been realized, and the proposed settlement fails to require that the Defendant disgorge that illicit gain, and it also allows the Defendant to realize future profits at the expense of the class members. Moreover, the settlement requires Movants to release their claims for money damages without receiving any monetary benefit. Thus, under the proposed settlement the Defendant keeps its illicitly obtained profits, the Movants receive no money damages, and the only relief afforded the Movants is the receipt of a reformed policy with its concomitant requirement that the Movants continue to do business with the very Defendants who defrauded them.

11. The proposed settlement attempts to bar and dismiss claims against Torchmark even though Torchmark is not even a party to the class action.

WHEREFORE, Movants respectfully ask the Court to allow them to opt out of the class certification or in the

alternative Movants object to class certification and to the proposed settlement on the grounds set forth herein.

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/s/ Steve Olen
STEVE OLEN

CERTIFICATE OF SERVICE

I do hereby certify that I have on this the 18th day of January, 1994, served a copy of the foregoing by mailing the same by United States Mail, properly addressed and first class postage prepaid, to the following:

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/s/ Steve Olen
STEVE OLEN
